United States Court of Appeals for the Second Circuit

EXHIBITS

77-7217

PLEASE RETURN TO
RECORDS ROOM

B
P/S

In The

United States Court of Appeals

For The Second Circuit

MAGNALEASING, INC.,
Plaintiff-Appellee.

-against-

STATEN ISLAND MALL, BLACKFRIARS REALTY CORP. and TOTTENHAM REALTY CORP.,
Defendants-Appellants.

ORIGINAL

UNITED STATES COURT OF APPEALS
FILED
JUL 8 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

EXHIBIT VOLUME

Pages E-1 to E-476

MARSHALL, BRATTER, GREENE, ALLISON & TUCKER
Attorneys for Defendants-Appellants
430 Park Avenue
New York, New York 10022
(212) 421-7200

KEANE & BUTLER
Attorneys for Plaintiff-Appellee
200 Park Avenue
New York, New York 10017
(212) 682-2247

10874

LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing
South River, N.J. (201) 257-6850 | New York, N.Y. (212) 840-9494 | Philadelphia, Pa. (215) 563-5587 | Washington, D.C. (202) 783-7288

INDEX

PAGE

Relevant Docket Entries 1a

Plaintiff's Amended Complaint 6a

Defendants' Answer to Amended Complaint 17a

Plaintiff's Reply to Defendants' Counterclaim 33a

Opinion #44711, Filed July 6, 1976 ..... 35a

Judgment, Filed July 20, 1976 ..... 50a

Report of Magistrate Jacobs, Filed February 14, 1977 ..... 52a

Plaintiff's Order to Show Cause, Issued February 18, 1977 ..... 65a

Affidavit of Thomas A. Butler, Sworn to February 17, 1977, in Support of Plaintiff's Motion to Confirm Magistrate Jacobs' Report 67a

Exhibit A, Report of Magistrate Jacobs, Filed February 17, 1977 ..... 71a

Exhibit B, January 17, 1977 Agreement among Chase Trust, Blackfriars, Tottenham Realty Corp., Staten Island Mall and Feist & Feist Designating Chase Trust as Mortgagee-in-Possession 72a

Exhibit C, Order by Hon. John A. Garbarino Relieving John P. Connors from Further Duty as Receiver of Staten Island Mall 84a

Exhibit D, Affidavit by Robert Machleder, Sworn to January 26, 1977, in support of application by Chase Trust to discharge John P. Connors 86a

INDEX

Defendants' Objections to the Special Master's Report and Memorandum of Law in Opposition to Plaintiff's Motion to Confirm 90a

Affidavit by Lon Bannett, Sworn to March 4, 1977, in Answer to Defendants' Objections 119a

Exhibit A, Defendants' Proposed Counter-Judgment 129a

Exhibit B, Judgment on Consent 132a

Exhibit C, July 29, 1976 Jeffrey Newman Letter to Thomas A. Butler 133a

Exhibit D, August 18, 1976 Edward F. Beane Letter to Jeffrey Newman 136a

Opinion #45714, Filed March 22, 1977 ..... 142a

Judgment #77,449, Filed March 31, 1977 ..... 150a

Defendants' Notice of Appeal, Filed April 28, 1977 ..... 153a

TRIAL TRANSCRIPT 1-423

DAMAGES REFERENCE TRANSCRIPT D1-D184

INDEX

EXHIBIT VOLUME

TRIAL

Plaintiff's Exhibits:

PX

1 - Joint statement of stipulated and disputed facts E1

2 - August, 1972 Staten Island Mall circular E46

3 - November, 1972 Staten Island Mall circular E48

5 - Letter dated December 13, 1972 from J.F. Kelly to Dale Kelly E50

6 - September 14, 1972 leasing report E51

7 - Leasing summary E53

9 - August 2, 1972 memo from D. Faughnan to Irving Feist and John Feist E62

10 - October 16, 1972 memo from Edward Fraher to Irving Feist E68

11 - December 15, 1972 memo from J. Feist to I. Feist E75

12 - August 14, 1970 memo from John Feist to E. Fraher E76

13 - Staten Island Mall - notes to cash flow projection E77

14 - Estimated income, expense and appraisal value information E82

15 - Lease dated May 4, 1973 between Staten Island Mall and Magnaleasing, Inc. E93

16 - June 18, 1974 letter from John Feist to Leonard Schonfeld; June 14, 1974 letter from Leonard Schonfeld to John Feist E209

INDEX

EXHIBIT VOLUME

17 - Estimated expense data E213

18 - August 14, 1972 memo from D. Faughan to Irving Feist E218

19 - November 16, 1972 letter from G.W. Kirtland to John F. Kelly E227

22 - Record of shopping center negotiation dated December 4, 1972 ..... E236

23 - January 15, 1973 letter from G.W. Kirtland to John F. Kelly E239

24 - Request for check dated August 31, 1973 ..... E241

25 - August 23, 1973 letter from John F. Kelly to Donald E. Faughnan E247

26 - April 30, 1974 letter from John F. Kelly to John Feist E248

27 - June 5, 1974 letter from Morris Gliklich to John Kelly E254

28 - June 20, 1974 letter from John Feist to John F. Kelly E257

29 - August 19, 1974 memo from John Grogan to John Feist E258

30 - Excerpts from Irving Feist's deposition E263

Defendants' Exhibits:

DX

D - Record of shopping center negotiation dated January 4, 1973 ..... E265

E - Handwritten memo re December 5 meeting E267

F - July 1, 1974 memo from John F. Kelly to G.A. Michaelson E269

INDEX

EXHIBIT VOLUME

G - July 10, 1974 memo from G.A. Michaelson to J.F. Kelly E271

H - July 22, 1974 memo from John F. Kelly to G.A. Michaelson E273

J - January 29, 1973 letter from G.W. Kirtland to John F. Kelly E275

K - February 12, 1973 letter from John F. Kelly to George W. Kirtland E277

L - February 27, 1973 letter from John F. Kelly to George Kirtland E278

O - Request for check dated September 19, 1973 ..... E294

P - December 3, 1975 memo from W.R. Cline to Jack Kelly E300

Q - May 17, 1974 memo from John F. Kelly to G.A. Michaelson E305

BB - Plaintiff's amended complaint E307

CC - August 3, 1973 memo from John F. Kelly to D.F. Minahan E308

DD - Consolidated Edison Company rate structures E310

EE - Brooklyn Union Gas Company rate structures E317

FF - Excerpts from Thomas Hafner's deposition E327

INDEX

EXHIBIT VOLUME

DAMAGE REFERENCE

Plaintiff's Exhibits:

PX

1 - Magnaleasing leasehold improvements E339

2 - Magnavox check for $5,056.81 ..... E341

3 - Joint statement of stipulated and disputed facts E345

4 - Magnaleasing invoices and checks E346

5 - Lease dated May 4, 1973 between Staten Island Mall and Magnaleasing, Inc. E353

6 - "Leasehold Improvement - Damages" E354

6A - "Leasehold Improvements - Interest" E355

7 and 7A (Revised - No. 2) - Schedule of common area overpayments E356

8 and 8A (Revised - No. 2) - Schedule of tax overpayments E360

9 - Assignment E365

11 - Sublease dated July 16, 1973, between Magnaleasing, Inc. and Regal of Staten Island, Inc. E366

12 - Affidavit of Phyllis Blank E387

13 - "Common Area Comparative Schedule" E392

14 - "Percentage Leases on 'Leasable' Basis" E393

INDEX

EXHIBIT VOLUME

Defendants' Exhibits:

DX

A - August 18, 1976 letter from Edward F. Beane to Jeffrey Newman E394

B - Request for check, invoice and Magnavox check for $3,970.81 ..... E399

C - Magnaleasing income and balance sheet statements E402

D - Minutes from Magnaleasing board of directors meetings E413

E - Excerpts re northeastern regional shopping centers from The Dollar and Cents of Shopping Centers E426

F - Excerpts re operating results of enclosed mall regional shopping centers from The Dollars and Cents of Shopping Centers E428

G - Document entitled "Summary: Alternative Measures of Inflation at Shopping Center" E430

H - Excerpts from Lease dated April 2, 1973, between Staten Island Mall and Brooks Fashion Stores, Inc. E431

I-1 to I-7
- Schedules of common area overpayment E440

J-1 and J-2
- Schedules of tax overpayment E468

PLAINTIFF'S TRIAL EXHIBITS

E 1

Trial Exhibit 1 - Joint statement of stipulated and disputed facts

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

MAGNALEASING, INC.,

Plaintiff,

- against -

STATEN ISLAND MALL,
BLACKFRIARS REALTY CORP. and
TOTTENHAM REALTY CORP.,

Defendants.

----------x

74 Civ. 5593 (LFM)

JOINT STATEMENT OF STIPULATED AND DISPUTED FACTS

STIPULATED FACTS

1. Plaintiff Magnaleasing, Inc. ("Magnaleasing") is a Delaware corporation with its principal place of business in Indiana; it is a wholly-owned subsidiary of The Magnavox Company ("Magnavox"), a Delaware corporation.

2. Magnaleasing's Certificate of Incorporation recites that it was executed on February 20, 1973.

3. Defendant Blackfriars Realty Corp. ("Blackfriars") is a New York corporation.

Plaintiff's Exhibit 1

Trial Exhibit 1

4. Blackfriars' certificate of incorporation recites that it was executed on December 28, 1970.

5. Defendant Tottenham Realty Corp. ("Tottenham") is a New York corporation.

6. Tottenham's certificate of incorporation recites that it was executed on December 28, 1970.

7. Defendant Staten Island Mall ("Mall") is a joint venture consisting of Blackfriars and Tottenham and is also the owner of the shopping center on Staten Island that is the subject of this action.

8. Feist and Feist ("Feist") is a New Jersey corporation incorporated in 1903.

9. Feist is and has been employed by Mall as managing agent and leasing agent for the Shopping Center.

10. Mall, the lessor, is the owner of the Staten Island Mall, the focal point of a 120-acre shopping center complex ("Shopping Center") situated in Richmond County.

Trial Exhibit 1

11. Magnaleasing, the lessee, is a tenant of the Shopping Center and operates pursuant to a lease ("Lease") executed by Magnaleasing on or about April 26, 1973, and by Mall on or about May 4, 1973.

12. On or about April 26, 1973, Magnavox guaranteed Magnaleasing's performance under the Lease.

13. Pursuant to the Lease, Magnaleasing leased Store #201 (the "Demised Premises") - constituting approximately 3,626 square feet of floor space - at the Shopping Center.

14. The gross leasable area at the Shopping Center was originally estimated at 420,000 square feet and on or about March 11, 1974 was determined by Haines, Lundberg & Waehler, architects, to be 430,209.06 square feet.

15. By sublease entered into as of July 16, 1973, Regal of Staten Island, Inc. ("Regal Magnavox") sublet the Demised Premises from Magnaleasing.

Trial Exhibit 1

16. The Shopping Center opened for business on August 9, 1973.

17. Regal Magnavox opened the Demised Premises for business in or about November 1973.

18. Regal Magnavox abandoned the Demised Premises on or about January 25, 1976; thereafter and until on or about March 15, the store was operated by Magnavox as a showroom.

19. John F. Kelly executed the Lease on behalf of Magnaleasing, John Feist on behalf of Mall.

20. Kelly negotiated the Lease on behalf of Magnaleasing, George Kirtland and Robert Ungerleider on behalf of Mall.

21. Kelly is an attorney, having graduated from the University of Maryland Law School in 1970 and having been admitted to practice in Maryland in 1970 and Florida in 1971; he has never engaged in private practice.

22. Since January 1, 1975, Kelly has been Group Counsel for Magnavox's Home Furnishings and Music Group; between August,

1972, and January 1, 1975, Kelly was corporate Director of Real Estate for Magnavox.

23. Prior to his employment by Magnavox, Kelly had negotiated leases for four years on behalf of Food Fair, Inc.

24. As Magnavox's Corporate Director of Real Estate, Kelly was responsible for the acquisition, disposal and administration of all real estate for Magnavox and was responsible in particular for negotiating all leases on behalf of Magnavox (10-11).

25. Magnaleasing was incorporated to engage in the business of leasing various properties for use by The Magnavox Company or retail distributors, including the acquiring of Magnavox Home Entertainment Centers.

26. Kirtland is an employee of Feist who was engaged in negotiating with prospective tenants for the leasing of space at the Staten Island Mall; he is a licensed real estate salesman under the laws of New York and New Jersey.

27. Ungerleider was an associate at Marshall, Bratter, Greene, Allison & Tucker, attorneys for Feist, between September

5, 1972 and July 2, 1973.

28. Kelly negotiated the "business" terms of the Lease with Kirtland, the "legal" terms with Ungerleider.

29. To the extent that the representations sued upon by plaintiff are claimed to have been oral, they are said to have been made by Kirtland to Kelly, Dale Kelly and Darryl Laxson.

30. Prior to the execution of the Lease, Kelly and Kirtland had only one face-to-face meeting; it took place on December 4, 1972 in a trailer on the construction site of the Staten Island Mall.

31. By letter dated November 2, 1972 Kelly wrote Feist about the prospect of leasing space at the Shopping Center:

> "We would be interested in the above referenced Shopping Center as a location for one of our Magnavox Home Entertainment Centers.
>
> This store would occupy 3,000 to 4,000 square feet and would sell radios, monochrome and color television sets, stereo components, console units and related Magnavox products.
>
> Please let us know if such space is available and its location within the Mall. We would also appreciate any additional information you may have on this development."

Trial Exhibit 1

32. By letter dated November 16, 1972, Kirtland wrote Kelly, stating:

> "Enjoyed talking to you about the above subject today and as I promised attached you will find the following:
>
> a. Brochure and other printed material.
> b. Leasing plans L-1 and L-2.
> c. Statistical comparison, income vs. population.
>
> As I explained on the telephone, we are under negotiation with Friendly Frost and as of this writing, we do not know whether we would be able to encourage a Magnavox store, however, this decision will be finalized within the next ten days. In any event, I realize from our conversation that Friendly Frost going into Staten Island Mall would make no difference to your entrance.
>
> I will give you a day or two to digest the attached material and I will then call you so that we can better and further discuss this project, resulting from the plans you will have on hand."

33. Kelly and Kirtland spoke by telephone on or about November 16, 1972.

34. Subsequent to November 16, 1972, Kelly and Kirtland spoke at least once more by telephone, during which conversation they arranged their December 4, 1972 meeting.

35. The December 4, 1972 meeting lasted between 30 minutes and one hour; present in addition to Kirtland and Kelly were

BEST COPY AVAILABLE

Darryl Laxson, Mavnavox's Regional (New Jersey) sales manager, and Dale Kelly, then Magnavox's Zone Manager (New York, New Jersey, Connecticut).*

36. Including the guarantee executed by Magnavox, a nine-page "rider", and exhibits, the Lease is 79 printed and typewritten pages in length.

37. The Lease provides for Magnaleasing to let its store for a term of 15 Lease Years - plus a Partial Lease Year - at a Fixed Minimum Rent of $23,452.00 per annum, computed at the rate of $6.50 per square foot per annum (Section 1.1).**

38. The Lease defines Additional Rent as "all sums of money which shall become due from and payable by Tenant hereunder

---

* Unless otherwise indicated, all references to "Kelly" are to John Kelly (Magnavox's then Corporate Director of Real Estate) not to Dale Kelly.

** Unless otherwise indicated, all Section references are to the Lease.

(excluding Fixed Minimum Rent...) including... Tax Rent, Common Area Charges, Utility Charge and Merchant Association Dues..." (Section 4.1B).

39. Section 4.5 of the Lease provides in part:

"Tax Rent. A. For the purposes of this Lease the term 'Taxes' shall include all real estate taxes, assessments, special or otherwise...and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the Lease Term be levied, assessed, imposed and become due and payable, or arise in connection with the use, occupancy or possession of, or grow due or payable out of, or for, the Shopping Center or any part thereof, or any land, buildings, or other improvements therein, excluding, however, any of the foregoing attributable to Common Areas (other than the Covered Mall) or relating to any one parcel included in the Shopping Center....As soon as practicable prior to the Commencement Date and as soon as practicable prior to the Commencement of each Lease Year, Landlord will submit to Tenant a statement reasonably estimating the taxes payable during the next succeeding Lease Year ('Tax Statement')...."

40. Section 4.5 of the Lease provides additionally:

"C. Landlord, at its option, may exclude from Taxes all real estate taxes and other impositions of the type described in Subsection A of this Section levied, imposed or otherwise attributable to (a) a parcel or parcels of land and the buildings or improvements thereon designated on Exhibit A as 'Future Development' or 'Convenience Center', (b) a parcel or parcels of land and any free-standing building which shall be constructed thereon, and (c) a

parcel or parcels of land and the buildings and improvements thereon, provided such buildings and improvements are used for other than retail purposes. In the event Landlord elects to exclude from Taxes the real estate taxes and other impositions relating to any of such parcels, the Floor Space in any building or buildings on such parcels shall be excluded from the Floor Space of all leased or occupied space in the Shopping Center for purposes of calculating the Tax Rent payable by Tenant pursuant to Subsection B of this Section."

41. Under the Lease, monthly Tax Rent is determined in accordance with the following formula:

		"Floor Space of the Demised Premises"
1/12 X Taxes	X	"Floor Space of all leased or occupied space in the Shopping Center"

(Section 4.5B)

42. Section 5.3 of the Lease provides that Common Area Charges shall mean:

"...an amount equal to the sum of (a) the actual cost of operating, managing, equipping, cleaning, lighting, repairing, replacing and otherwise maintaining the Common Areas and maintaining order and security therein, including, but not limited to, all costs of insurance relating thereto, all Taxes allocable thereto (other than those payable by Tenant pursuant to Section 4.5) and all costs of maintaining and operating sewerage treatment facilities and meter equipment rooms, and (b) 15% of the costs referred to in (a) above in respect of administrative overhead, less (c) the amount paid by occupants of any Department Store in respect of any of the above costs."

43. Under the Lease, Magnaleasing's (monthly) Proportionate Share of Common Area Charges is determined in accordance with the following formula:

$$1/12 \times \text{Common Area Charges} \times \frac{\text{"Floor Space of the Demised Premises}}{\text{"Floor Space of all leased area occupied space in the Shopping Center"}}$$

(Sections 5.3A(ii) and 5.3B).

44. Respecting Common Area Charges, the Lease itself provided in pertinent part:

> "For purposes of the period from the Commencement Date to the date Landlord furnishes the first Statement to Tenant, Landlord's estimate of Tenant's Proportionate Share of Common Area Charges shall be $.60 per annum per square foot of floor space in the Demised Premises."

The Commencement Date was August 9, 1973; the first statement to Tenant was rendered on or about April 15, 1974.

45. The Lease provides additionally that "[t]he laws of the State of New York shall govern the validity, performance and enforcement of this Lease" (Section 11.6).

Trial Exhibit 1

46. By letter dated January 15, 1973, Kirtland wrote Kelly, stating in part:

> "Resulting from a conversation with Mr. Dale Kelly concerning the above subject and his confirmation of a conversation with you regarding the minimum rent, my committee has authorized me to offer you the following terms and conditions for a Magnavox Center in the Staten Island Mall.
>
> Location: Southern half of Room No. 201.
>
> Size: Approximately 3,660 square feet, 30' X 122'.
>
> Term: 15 years.
>
> Rent: $6.50 per square foot....
>
> ...
>
> CAM [Common Area Maintenance]: Tenant will pay his proportionate share. Will be billed at $.60 per square foot.
>
> ...
>
> Real Estate Taxes: Landlord will pay first $.25 per square foot. Tenant will pay his proportionate share all over,
>
> ..."

47. By letter dated January 29, 1973, Kirtland wrote Kelly, stating in part:

E 13

Trial Exhibit 1

"Re: First Lease Draft
Magnavox
Staten Island Mall

Dear John:

Per the authorization of Mr. Dale Kelly, attached you will find two (2) copies of the above subject. If you have any lease comments, please return them to me in writing, detailed by page number and article number by no later than February 12, 1973. Upon receipt, I will turn them over to our attorneys, Marshall, Bratter, Greene, Allison & Tucker, located at 430 Park Avenue, New York, New York at which time they will contact you for a finalization of the comments. Your contact at Marshall, Bratter, Greene, Allison & Tucker will be Mr. Larry Eisenberg."

48. By letter dated February 27, 1973, Kelly sent Kirtland a 15-page document entitled Lease Comments.

49. Following his forwarding the Lease Comments to Kirtland on February 27, 1973, Kelly never again spoke with Kirtland prior to the execution of the Lease.

50. Thomas N. Hafner is and has been since 1973 the "in house" Magnavox attorney and, together with Kelly, is responsible for handling legal problems of Magnaleasing.

51. Kelly sent Hafner copies of the proposed Lease, which incorporated the Lease changes, and of Kelly's Lease Comments; Hafner did not read the Lease prior to its execution.

Trial Exhibit 1

52. Kelly made no independent investigation concerning the assessment of the Mall as a completed project.

53. Kelly did not ask Kirtland nor Ungerleider to insert into the Lease the figure $1.00 for Tax Rent and $.60 for Common Area Charges.

54. All changes from the printed form lease were initialed on behalf of Magnaleasing by Kelly.

55. Kelly viewed the negotiation of the Lease as an arm's-length transaction in the sense that each party negotiated independently, bargaining to get the best possible result for itself.

56. Magnaleasing has no bank account and no employees.

57. At the time of the execution of the Lease, Kelly expected that Magnaleasing would pay Additional Rent - including Tax Rent and its Proportionate Share of Common Area Charges - in accordance with what the Lease would provide, which would be in accordance with Kirtland's alleged estimates.

58. In or about April, 1974, Kelly learned what Magnaleasing's Proportionate Share of Common Area Charges would be - approximately $2.58 per square foot per annum.

59. Pursuant to the Terms of a stipulation of settlement dated February 25, 1975, in a proceeding entitled Staten Island Mall v. Magnaleasing Inc. (Civil Court of the City of New York, County of Richmond - Index No. 0003/75), Magnaleasing has paid and has continued to pay Rent and Additional Rent due under the Lease (excluding attorneys' fees claimed due as Additional Rent by reason of the legal proceedings).

60. The New York City real estate tax rate for the current fiscal year (ending June 30, 1976) is $8.187 for each $100 of assessed valuation; since fiscal 1971, this rate has risen as follows:

1971 - up 37C (6.7%) to $5.889
1972 - up 8C (1.4%) to $5.969
1973 - up 54.8C (9.2%) to $6.517
1974 - up 37C (5.7%) to $6.886
1975 - up 46.6C (6.8%) to $7.353
1976 - up 83.4C (11.3%) to $8.187

61. Real estate taxes in New York City are levied on the basis of a fiscal year beginning July 1 and ending June 30.

Trial Exhibit 1

62. Section 1515 of the New York City Charter provides in part: "The [city] council shall meet not later than the twenty-fifth day of June to fix the annual tax rate".

63. On or about April 15, 1974 Magnaleasing's Proportionate Share of Common Area Charges was fixed at approximately $2.58 per square foot per annum; it has remained unchanged to date.

64. On or about August 9, 1973, Magnaleasing's Tax Rent was estimated by Mall at approximately $2.45 per square foot per annum. A statement was rendered to Magnaleasing by Mall on or about that date ~~determined Magnaleasing's Tax Rent~~ at the estimated amount of $2.45 per square foot per annum.

65. On or about April 15, 1974, Magnaleasing Tax Rent was estimated by Mall at approximately $2.63 per square foot per annum. A statement was rendered to Magnaleasing by Mall on or about that date ~~determined Magnaleasing's Tax Rent~~ at approximately $2.63 per square foot per annum.

Trial Exhibit 1

66. On or about June 1, 1975, Magnaleasing's Tax Rent was estimated by Mall at approximately $6.04 per square foot per annum. A statement rendered to Magnaleasing by Mall on or about that date determined Magnaleasing's Tax Rent at approximately $6.04 per square foot per annum.

67. Mall has commenced four certiorari proceedings against the City of New York with respect to its assessments for fiscal years 1972-3, 1973-4, 1974-5, 1975-6; all four proceedings are now pending before the Supreme Court of the State of New York, County of Richmond.

68. Blackfriars does not have a controller nor does it compile or keep any day-to-day books or records apart from Feist.

69. Tottenham does not have a controller nor does it compile or keep any day-to-day books and records apart from Feist.

70. John Feist was in charge of the leasing program for the Staten Island Mall.

71. Jack Grogan was an employee of Feist and its controller.

Trial Exhibit 1

72. Prior to August 1972, John Feist initiated a leasing program for the Mall and was in charge of said program from its inception up to the present date. At least five salespersons, including George Kirtland, were engaged in the leasing program.

73. In August of 1972 Staten Island Mall published an advertising circular in which it stated that "more than 50 per cent of the space at Staten Island Mall has been leased by local and national chains."

74. In November of 1972 Staten Island Mall published a second circular dated November 1972, stating "Feist & Feist, developers of the mall with associated investors, said that leasing has surpassed the 50% mark." It also said "Scores of national and local retail chains have leased stores at Staten Island Mall since construction of the development was announced."

75. On December 4, 1972 Messrs. J. Kelly, D. Kelly and D. Laxson met with George Kirtland in a construction trailer at the Staten Island Mall site. At that time the Mall was partially constructed, but scheduled to open in March 1973; Macy's was then the only store open for business.

76. At the December 4, 1972 meeting Kirtland showed Kelly, Dale Kelly and Darryl Laxson a leasing plan consisting of a floor plan for each floor of the Mall.

77. The meeting terminated without any final agreement.

78. On December 5, 1972 Kirtland reported on the meeting to the leasing committee. Leasing committee recommended $7.50 per square foot per annum Fixed Minimum Rent.

79. Shortly before December 15, 1972, John Feist was advised by Ed Fraher that an estimate made by Fraher of real estate taxes to be paid by the tenants for the opening year would be $2.34 per square foot.

80. John Feist communicated this information to Irving Feist and Donald Faughnan but to no one else.

81. John Feist stated on December 15, 1972 that "if we're going to have taxes like this [$2.34 a square foot] (in addition to the Common Area and everything else), we're certainly going to have problems with our tenants."

Trial Exhibit 1

82. Between December 4 and December 13, 1972 Kirtland and Kelly had a telephone conversation in which they discussed Mall's offer to rent the premises at $7.50 per square foot Fixed Minimum Rent per square foot per annum, which offer was refused by Kelly. During that conversation, Kelly told Kirtland that Magnavox could not afford to rent the space at that price.

83. On or about December 26, 1972 Kirtland conferred with Dale Kelly re the status of negotiations.

84. In a telephone conversation on or about December 26, 1972 between Dale Kelly and Kirtland, Kelly proposed to lease the space for $6.50 per square foot per annum Fixed Minimum Rent. On January 3, 1973 the leasing committee approved the offer at $6.50 per square foot per annum Fixed Minimum Rent.

85. By letter dated February 12, 1973, Kelly wrote Kirtland, stating:

> "This letter is to inform you that we will be unable to meet your proposed deadline on the Staten Island Mall lease.
>
> Frankly, this is the longest and most restrictive lease I have seen in some ten years of real estate experience, and

we are still attempting to wade through it. We will make every effort to get it out the end of this week or the first of next week with our proposed changes."

86. On February 13, 1973 Kirtland reported the Lease sent out to the leasing committee.

87. On April 3, 1973 John Feist reported to the leasing committee that the Magnavox lease was ready to be signed - all terms agreed to and redraft being sent to tenant.

88. On April 24, 1973 John Feist reported to the leasing committee that the Magnavox lease was out.

89. On June 25, 1973 notice was given to Magnaleasing by Feist that the Mall would open to the public on August 9, 1973.

90. On August 23, 1973, John Kelly wrote to Donald Faughnan protesting the tax estimate and demanding an analysis of the statement.

91. On September 6, 1973 Donald Faughnan replied to the Kelly letter of August 23, 1973, stating in part:

Trial Exhibit 1

"(2) Total leaseable floor space is approximately 420,000 square feet therefore the difference between total leaseable floor space and the estimated leased or occupied space of 250,000 square feet used in the tax statement is 170,000 square feet.

(3) With respect to your comments concerning a $1.00 per square foot estimate for real estate taxes, I am sure you must be aware of the difficulties of estimating taxes in New York before actual assessment date. Also you must realize that since the proration of taxes is based on leased space any comparison of an estimate with actual expense is significantly affected by the level of occupancy."

92. On December 18, 1973 Magnavox informed Feist to send future billings to the sub-tenant. Magnaleasing also protested certain utility and interest charges on the December 1973 statement.

93. On or about April 15, 1974, Magnaleasing received a statement adjusting common area charges at $2.58 per square foot together with an arrearage charge of $1,798.92.

94. On April 30, 1974, Kelly wrote to John Feist protesting Mall security, maintenance, utility and tax charges.

95. By letter dated May 6, 1974, John Feist suggested a meeting between himself and Kelly.

Trial Exhibit 1

96. On May 16, 1974 representatives of Mall, to wit: John Feist, Lawrence Eisenberg and Patrick Dunne met with Kelly and William Cline to discuss, inter alia, the costs at the Staten Island Mall.

97. By letter dated June 20, 1974, John Feist wrote Kelly expressing concern about the difficulties Magnaleasing was experiencing at the Staten Island Mall.

98. By letter dated June 4, 1974 Kelly sent to Feist actual and projected profit and loss statements for the Mall store.

99. On June 20, 1974 John Feist wrote to Kelly and denied that "our representatives mislead [sic] your company. It is my feeling that a company such as yours should be fully aware of all situations that it is becoming involved in prior to its involvement

100. John Feist believed that Tax Rent, Common Area Charges and occupancy levels were important considerations for a tenant entering into a lease.

101. John Feist has expertise in the leasing of malls.

102. John Feist worked in many departments at Feist & Feist including management, industrial, commercial, insurance, mortgage, financing. In 1970 he went into shopping center development and has continued in this area to the present time.

103. In 1972, the accounting department at Feist prepared estimates for projected real estate taxes for Staten Island Mall.

104. Prior to August of 1972, John Feist made a "guesstimate" that Tax Rent would ultimately be between one dollar and one dollar and twenty-five cents ($1.25), of which the landlord would pay 25 cents.

105. John Feist stated that he made a "guesstimate" of future Common Area Charges at 60 cents.

106. Section 8.1 of the Lease provides in pertinent part:

> "Affirmative Covenants. Tenant covenants, at its expense, at all times during the Lease Term:
>
> M. Fees and Expenses. To pay upon demand Landlord's expenses (including reasonable attorneys' fees and disbursements) incurred in enforcing any obligation of the Tenant under this Lease or in curing any default by Tenant under this Lease, as provided in Sections 10.3 and 10.6."

Trial Exhibit 1

PLAINTIFF'S CONTENTIONS

107. The officers of Blackfriars are: President, Irving Feist; Vice Presidents, John Feist, Lawrence Eisenberg.

108. The directors of Blackfriars are: Irving Feist, John Feist, Dorothy Feist.

109. The shareholders of Blackfriars are: Feist & Feist a New Jersey Corporation, Irving Feist, John Feist.

110. The officers of Tottenham are: President, Irving Feist; Vice President, John Feist.

111. The directors of Tottenham are: Irving Feist, John Feist, Dorothy Feist.

112. The shareholders of Tottenham are: Feist & Feist and Chase Manhattan Mortgage & Realty Trust.

113. The officers of Feist are: Irving Feist, President; John Feist, Vice-President.

114. Feist is the developer of the Staten Island Mall.

Trial Exhibit 1

115. John Feist and Irving Feist are both licensed real estate brokers under the laws of the State of New York.

116. Feist & Feist is a licensed real estate broker under the laws of the State of New York.

117. Feist & Feist is a member of the New York real estate board of New York.

118. John Feist is a member of the Real Estate Board of New York and a member of the Monmouth County Real Estate Board.

119. At all times covered by the complaint Donald Faughn. was employed by Feist & Feist and served as its controller.

120. At all times covered by the complaint Ed Fraher was employed by Staten Island ' ll as head of the construction department.

121. Feist & Feist has publicly stated that it has been in the real estate business for over 70 years and has developed a reputation for outstanding performance and integrity as one

of the leading real estate firms in the East. Feist & Feist also held itself out to the public as expert in mortgage financing, industrial and retail leasing, shopping center development and management, and all other services that the real estate profession must perform. (National Mall Monitor)

122. Prior to 1972 Feist & Feist embarked on the development of the Staten Island Mall. Phase I of the Mall was to consist of a two-level enclosed shopping area with a major department store at each end. The department stores are Macy's and Sears and although connected by the mall each is independent of the Mall in that they own their respective buildings and the underlying land.

123. The mall was to consist of 614,000 square feet, 420,000 square feet was to be leased for retail store use. An additional 5,100 square feet was to be rented for Kiosks and small service facilities in the Center court. A convenience center consisting of 80,000 square feet was also to be constructed on a separate parcel of land which would house a supermarket and related service stores.

Trial Exhibit 1

124. As of July 30, 1972, the percentage of space leased at the Mall was 10.1%. Following is a tabulation of the space leased at the end of each month from August 1972 to August 1973:

August 31, 1972	14.4%
September 30, 1972	17.3%
October 31, 1972	24.4%
November 30, 1972	30.3%
December 31, 1972	32.8%
January 30, 1973	42.8%
March 30, 1973	46.2%
April 30, 1973	48.2%

125. As of November 30, 1972 the percentage of space leased at the Mall was 30.3%.

126. On November 16, 1972 Staten Island Mall by George Kirtland mailed the August and November circulars to John Kelly in connection with the interest expressed by Magnavox in renting space at the Mall. The letter and circulars were received and read by John Kelly.

127. Mr. Kirtland offered to rent a store to Magnaleasing at $10.00 a square foot for base rent with the tenant to pay its pro rata share of common area charges and tax rent charges. In

addition tenant would be required to pay a "percentage rent" which is based on gross sales revenues. Kirtland asked for percentage rent of 5%.

128. In response to an inquiry Kirtland said that common area charges at the Mall were estimated at $.60 per square foot; and that taxes at the Mall were estimated at $1.25 per square foot with the landlord paying the first $.25.

129. Kirtland also stated at the meeting that there was one, possibly two, store locations available; and that the entire mall was almost fully leased.

130. Mr. J. Kelly told Mr. Kirtland that a Magnavox store could not do the volume of business necessary to pay a base rent of $10.00. Mr. Kelly offered to pay $6.00 a square foot together with $1.00 for taxes and $.60 for common area charges.

131. Kirtland knew that Magnaleasing would not operate the store itself but that it would be presenting its costs to a retailer as a subtenant.

Trial Exhibit 1

132. As of January 23, 1973 a pro-forma of Income and Expenses developed by Chase Manhattan Mortgage & Realty Trust showed common area charges at $2.38.

133. Faughnan did not deny that the representation of $1.00 for tax rent had been made.

134. On December 26, 1973 Magnaleasing's sub-tenant paid the December bill and protested the tax assessment and utility charges.

135. On April 22, 1974 the Merchants Association held a special meeting to discuss the increases and determined to hire a public accountant and an attorney to investigate the charges.

136. John Feist stated that the advertising brochures were to give general information to the public.

Trial Exhibit 1

137. Dale Kelly was involved in negotiating the subject lease.

138. John Feist instructed an employee of Feist & Feist to obtain the common area charge estimate.

139. John Feist stated that after making his original guesstimate as to tax rent he took no further action to determine the reliability of that figure and he did not instruct anyone else to check the reliability of that figure.

140. John Feist stated that after making his original guesstimate as to common area charges he took no further action to determine the reliability of that figure and did not instruct anyone to check the reliability of the figure.

141. The convenience center is a separate tax lot and has separate common area and tax charges.

142. John Feist informed the sales people including Kirtland of the $1.00 estimate for taxes.

143. John Feist did not give the sales people any other estimate for taxes except $1.00 to $1.25.

144. Other tenants have complained that misrepresentations were made to them regarding tax rent and common area charges.

145. In May, 1974 VIP Yarns wrote to John Feist stating that it was represented to them that common area charges would be 60 cents per square foot.

Trial Exhibit 1

146. On June 18, 1974 John Feist wrote to Leonard Schonfeld in response to an inquiry as to tax estimate and common area charges.

147. John Feist stated in that letter that "Based upon our knowledge of the area, we made our best estimates to come up with the tax rent that we could rely on."

148. John Feist stated that his best estimate of taxes was $1.00 to $1.25.

149. John Feist stated in the Schonfeld letter that with regard to common area charges "we come up with our best estimates, but we were totally wrong."

150. John Feist stated that his best estimate for common area charges was 60¢ per square foot.

151. John Feist expected most propective tenants to inquire as to what common area charges would be.

152. John Feist expected most prospective tenants to inquire as to what taxes would be.

153. John Feist knew tenants would rely on the estimates provided by Feist & Feist.

154. John Feist knew Magnaleasing could not have been aware that common area charges would be over $2.00.

155. Feist & Feist had information which would have assisted Magnaleasing in ascertaining tax rent.

156. John Feist made this information available to the leasing people.

157. This information was not made available to Magnaleasing.

158. Magnaleasing could not have determined the tax rent independently.

159. George Kirtland used the Staten Island Mall circular in connection with leasing activities.

160. George Kirtland negotiated approximately 70-80 leases at Staten Island Mall.

161. George Kirtland stated he did not receive any information from Feist & Feist as to what common area charges might be.

162. George Kirtland did not make any inquiry of anyone as to what to advise tenants would be the estimated common area charges.

163. George Kirtland did not request any information from Feist & Feist as to the per square foot tax charges.

164. George Kirtland stated he was provided with no information by anyone relative to tax charges.

165. George Kirtland stated he had no idea what the common area charges were going to be.

166. George Kirtland stated he had no idea what the tax charge would be.

Trial Exhibit 1

167. George Kirtland stated that in very few cases did a prospective tenant inquire as to what the tax charge would be.

168. George Kirtland stated that to assist tenants in arriving at a conclusion as to tax rent, he told them the taxes on the adjacent Korvettes properly were 85 cents.

169. George Kirtland was given a brochure by Feist & Feist which he distributed to prospective tenants.

170. George Kirtland stated that no one at Feist & Feist gave him any information regarding what taxes or common area charges might be.

171. George Kirtland stated that he never represented to any tenant what percent of the Mall was leased.

172. George Kirtland gave out the circulars representing the Mall to be 50% leased to prospective tenants.

173. Feist & Feist through George Kirtland represented to Magnaleasing that there were only one or two spaces left to be rented on December 4, 1972.

174. George Kirtland represented on December 4, 1972 that the Mall was almost fully leased.

175. George Kirtland represented on December 4, 1972 that the lease for the third department store was about to be signed.

Trial Exhibit 1

176. Feist & Feist represented to Magnaleasing that the tax rent would be approximately $1.00 per square foot when the Mall was fully assessed.

177. Feist & Feist represented that common area charges would be approximately 60 cents per square foot for the first year of operation.

178. Feist & Feist knew the representation of 60 cents per square foot for common area charges was false.

179. Feist & Feist knew that the representation of $1.00 per square foot for real estate was false.

180. Feist & Feist knew Magnaleasing relied on the figures given them for tax and common area charges.

181. Feist & Feist intended that Magnaleasing rely on these figures to induce it to enter into the lease.

182. Feist & Feist knew the Mall was not 50% leased in August 1972.

183. Feist & Feist knew the Mall was not 50% leased in December 1972.

184. In March, 1971 Feist and Staten Island Mall had an estimate of taxes of approximately $1.70 per square foot.

185. In August 1972 Feist and Staten Island Mall had an estimate of common area charges of approximately $2.10 and an estimate of tax charges of approximately $2.45 and John Feist was so informed.

Trial Exhibit 1

186. John Feist was fully informed of financial information relative to prospective anticipated income, cost and expenses of Staten Island Mall.

187. In October 1972 Feist and Staten Island Mall had a tax estimate of approximately $2.49 and John Feist was so informed.

188. Prior to April 1973 common area expenses were estimated at approximately $2.80 per square foot.

189. John Feist knew in or about January, 1973 that common area charges would be estimated at approximately $2.03 per square foot for the fiscal year of operation exclusive of utility costs for common area.

190. George Kirtland stated that he never told any prospective tenant that the common area charges would be approximately 60 cents and the tax rent approximately $1.00.

191. The Mall was not almost fully leased in December 1972.

192. Feist and Staten Island Mall knew the Mall was not almost fully leased in December 1972.

193. Feist and Staten Island Mall knew that Magnaleasing would rely on the representation that the Mall was almost fully leased.

194. Magnaleasing could not have independently determined the occupancy of the Mall in December 1972.

Trial Exhibit 1

195. The opening of a third department store was a material consideration in negotiating the Magnaleasing lease.

196. Feist knew that the third department store would not open prior to 1974.

197. Feist knew that Magnaleasing would rely on the representation regarding the third department store.

198. Feist falsely represented the opening of the third department store with the intent to induce Magnaleasing to enter into the lease.

199. Magnaleasing could not have determined independently whether or not the third department store would open.

200. The opening of the third department store was a material fact relating to volume, traffic and sales potential at the Mall.

201. Feist and Staten Island Mall represented that all tenants would share equally on a proportionate basis tax and common area charges.

202. Tenants do not share equally on a proportionate basis these charges.

203. Defendants knew that not all tenants would share equally on a proportionate basis these charges.

204. Magnaleasing relied on this representation; Magnaleasing could not determine the falsity of this representation independently.

Trial Exhibit 1

205. For tax year July 1, 1973 to June 30, 1974, Magnaleasing's tax rent was approximately $2.60 per square foot per annum. This tax rent was based on an incomplete assessment on the Mall.

205a. The Mall knew that Magnaleasing's tax rent would be approximately $2.60 per square foot per annum prior to the execution of the lease.

205b. The Mall did not inform Magnaleasing of this fact notwithstanding that it represented to Magnaleasing that taxes would be $1.00 per square foot.

205c. During tax year July 1, 1973 to June 30, 1974, the Mall was not fully assessed. The assessment for that year did not include the Mall building which had an assessed value of $10,800,000. The City of New York had reduced the assessment of the Mall by removing the Mall building from the assessment in or about April 15, 1974.

205d. Tax year 1974-1975 was the first year in which the Mall was assessed as a fully completed structure. The Mall's assessed valuation for that year was approximately $25,000,000.

205e. The tax rent on the center Mall as a fully completed structure in tax year July 1, 1974 to June 30, 1975 was approximately $4.95 per square foot per year.

205f. Because the Mall was not fully leased during that tax year, Magnaleasing's tax rent was approximately $5.80 per square foot per annum.

205g. On tax year 1975-1976, the tax rent on the Mall is approximately $5.00 per square foot per annum. Because the Mall is not fully leased, Magnaleasing's tax rent is approximately $6.07 per square foot.

Trial Exhibit 1

DEFENDANTS' CONTENTIONS

206. Except as set forth in the "Stipulated Facts", defendants deny the material allegations in plaintiff's amended complaint and deny further each of "Plaintiff's Contentions".

207. Respecting both Magnaleasing's monthly Tax Rent and Proportionate Share of Common Area Charges, the Lease provides for calculations based on Mall's interim estimates of what the year-end costs will be; following the close of each Lease Year - defined as ending January 31 (Section 4.4) - Magnaleasing's Tax Rent and Common Area Charges are adjusted upward or downward as necessary in light of the actual costs (Sections 4.5B, 5.3B).

208. Respecting Tax Rent, the Lease provides (Section 4.5B) for Magnaleasing to pay in accordance with Mall's interim estimate of taxes; the first such estimate appeared on Mall's initial Tax Statement - rendered on or about August 6, 1973 - and provided for Magnaleasing to pay Tax Rent at the rate of $2.45 per square foot per annum.

Trial Exhibit 1

209. Respecting Common Area Charges, the Lease itself provided Mall's initial interim estimate, which covered a very specific period:

> "For purposes of the period from the Commencement Date [August 9, 1973] to the date Landlord furnishes the first Statement to Tenant [on or about April 15, 1974], Landlord's estimate of Tenant's Proportionate Share of Common Area Charges shall be $.60 per annum per square foot of floor space in the Demised Premises."

210. The Lease provides, inter alia,

- that "[a]ll negotiations, considerations, representations and understandings between the parties are incorporated in this Lease" (Section11.6);
- that "this Lease may not be changed or terminated orally" (Section 11.14), and
- "No Representations by Landlord. Landlord or Landlord's Agents have made no representations, warranties or promises with respect to the Demised Premises or the Building except as herein expressly set forth" (Section 11.15).

EDITOR'S NOTE

Pages E 41 were missing at time of filming. If, and when obtained, a corrected fiche will be forwarded to you.

and Common Area Charges; he never asked because he believed that Mall would never agree to such an inclusion (89-90, 240-1).

216. Regarding the prospect of a third department store for the Shopping Center - that is, other than Sears and Macy - Kirtland told Kelly at their December 4, 1972 meeting that no firm agreement had been reached.

217. Kelly expected that Magnaleasing would pay Additional Rent - inclu[illegible] Tax Rent and its Proportionate Share of Common Area Charges - in accordance with what the Lease would provide, rather than what Kirtland had allegedly said (341, 343-4, 347-348); he had that expectation at the time he signed the Lease on behalf of Magnaleasing.

218. Concerning the "legal" terms of the proposed Lease, Kelly negotiated in person with Ungerleider in Fort Wayne as well as by telephone (355).

219. Volume 2 of Moody's Industrial Manual (1975) recites that as of April, 1975, North American Phillips Corp. owned 84%

of the Common Stock of Magnavox and that Magnavox's Consolidated Income Account for the years ended December 31 states that Magnavox enjoyed net sales in the following amounts:

1972	$685,958,000
1973	$620,160,000
1974	$519,139,000

220. The New York City real estate tax rate for the current fiscal year (ending June 30, 1976) is $8.187 for each $100 of assessed valuation; since fiscal 1967, this rate has risen as follows:

1967 - up 39.7C (817%) to $4.957
1968 - up 11.6C (2.3%) to $5.073
1969 - up 14.5C (2.8%) to $5.218
1970 - up 30.1C (5.8%) to $5.519
1971 - up 37C (6.7%) to $5.889
1972 - up 8C (1.4%) to $5.969
1973 - up 54.8C (9.2%) to $6.517
1974 - up 37C (5.7%) to $6.886
1975 - up 46.6C (6.8%) to $7.353
1976 - up 83.4C (11.3%) to $8.187

60.7%

221. Section 1515 of the New York City Charter provides in part: "The [city] council shall meet not later than the twenty-

fifth day of June to fix the annual tax rate"; in recent years the City Council has not in fact determined the tax rate until shortly before June 25 of any given year.

222. Since April 15, 1974, tenants on a "leasable" basis have been billed for Common Area Charges at approximately $1.93 per square foot per annum.

223. On or about August 9, 1973, Magnaleasing's Tax Rent was fixed at approximately $2.45 per square foot per annum; tenants on a "leasable" basis were billed Tax Rent at about $1.32 per square foot per annum.

224. On or about May 1, 1974, Magnaleasing's Tax Rent was fixed at approximately $2.63 per square foot per annum; tenants on a "leasable" basis were billed Tax Rent at approximately $1.96 per square foot per annum.

225. On or about June 1, 1975, Magnaleasing's Tax Rent was fixed at approximately $6.04 per square foot per annum; tenants on a "leasable" basis were billed at approximately $4.87 per square foot per annum.

Trial Exhibit 1

226. In connection with the prosecution of a proceeding entitled Staten Island Mall v. Magnaleasing, Inc. (Civil Court of the City of New York, County of Richmond - Index No. 0003/75), defendants incurred $18,781.15 in attorneys' fees and $742.91 in disbursements, no part of which has been paid to defendants by plaintiff.

227. In connection with the defense of the instant action and through February 29, 1976, defendants had incurred $85,611.00 in attorneys' fees and $5,519.94 in disbursements, no part of which has been paid to defendants by plaintiff.

Dated: New York, New York
March 22, 1976

KEANE & BUTLER

By /s/ Thomas Butler
A Member of the Firm
Attorneys for Plaintiff
200 Park Avenue
New York, New York 10017
(212) 682-2247

MARSHALL, BRATTER, GREENE, ALLISON & TUCKER

By Arnold M. Berger
A Member of the Firm
Attorneys for Defendants
430 Park Avenue
New York, New York 10022
(212) 421-7200

E 46

Trial Exhibit 2 - August, 1972 Staten Island Mall circular

EXHIBIT 15A 7/10/76 W.D.

STATEN ISLAND Mall

VOLUME 1, NO. 1

AUGUST, 1972

OPENING SET FOR SPRING OF 1973

Construction Rushing Ahead for March 1973 Opening

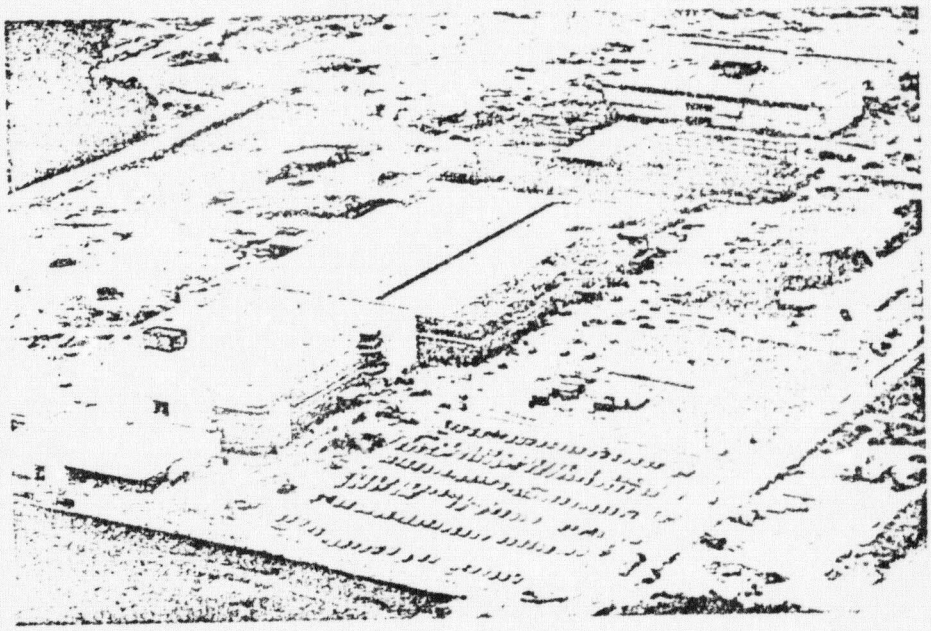
Staten Island Mall, the 2.8 million square foot business complex now rising at the intersection of Richmond Hill Road and Richmond Avenue, will be the largest shopping center in the City of New York and one of the largest in the nation. Already 90 per cent of the steel work is in place and construction crews of 210 men are at work eight hours a day moving construction towards the spring of 1973 opening date. The mall will include 1.8 million square feet of enclosed shopping center anchored by Sears and Macy's and two other department stores.

Before the steel went into place, a steady stream of truck mixers delivered vast amounts of concrete, which was poured into foundations and floors. In addition, 18,000 bricks have been set into place.

Located at the geographical center of Staten Island, the enclosed, weather-controlled mall will offer a welcome departure in shopping mall design. Instead of trying to hide the fact that the mall is enclosed and weather controlled, Feist & Feist, the real estate firm which is developing the mall with associated investors, decided to take advantage of the indoor atmosphere. The interior emphasis will be on an atmosphere that is sparkling and theatrical, and an elaborate lighting system will automatically adjust in intensity for day and night shopping.

Included in the shopping complex will be four department stores. Work is nearing completion on a Sears' store and a Macy's store. Two other department store tenants will be announced shortly.

When the mall opens in the spring of 1973, it will offer parking for 10,000 cars. • • •



Ninety per cent of the steel work is in place on the 124 acre Staten Island Mall site at intersection of Richmond Hill Road and Richmond Ave. Macy's will open this fall. Rest of the mall will open in the spring.

Mall Breaks 50% Mark

More than 50 per cent of the space at Staten Island Mall has been leased by local and national chains. Following is a list of some of the tenants:

Lerner Shops ■ East River Savings Bank ■ National Shoes ■ National Men's Shops ■ Walden Books ■ Jack Grossman Enterprises (Scene II music shop) ■ Kinney Shoes ■ Vincent (Tappins) Jewelers ■ Animals 'N Things ■ Bavarian Soft Pretzels ■ Cambridge Coffee, Tea & Spice House ■ Cheese Villa ■ Home Decor ■ Kaufman Brothers Toys ■ Nichols Children's Shoes ■ N. R. J. Pretzels ■ Orange Bowl ■ Tinder Box.

Borough President Sees Strong Market

Staten Island is the fastest growing borough in New York City. According to census figures, Staten Island has a population of 322,067. And this is expected to increase to 375,000 by 1975 and to 450,000 by 1980. All of these are potential customers for Staten Island Mall, the 2.8 million square foot business and retail complex, which will open at the geographical center of the Borough in the Spring of 1973. In addition, it is expected that the Mall will draw shoppers from Brooklyn and from New Jersey.

"Staten Island is a sleeping giant among retail markets," says Irving Feist,

Continued on Page 2

PL Exh. 2 rec.

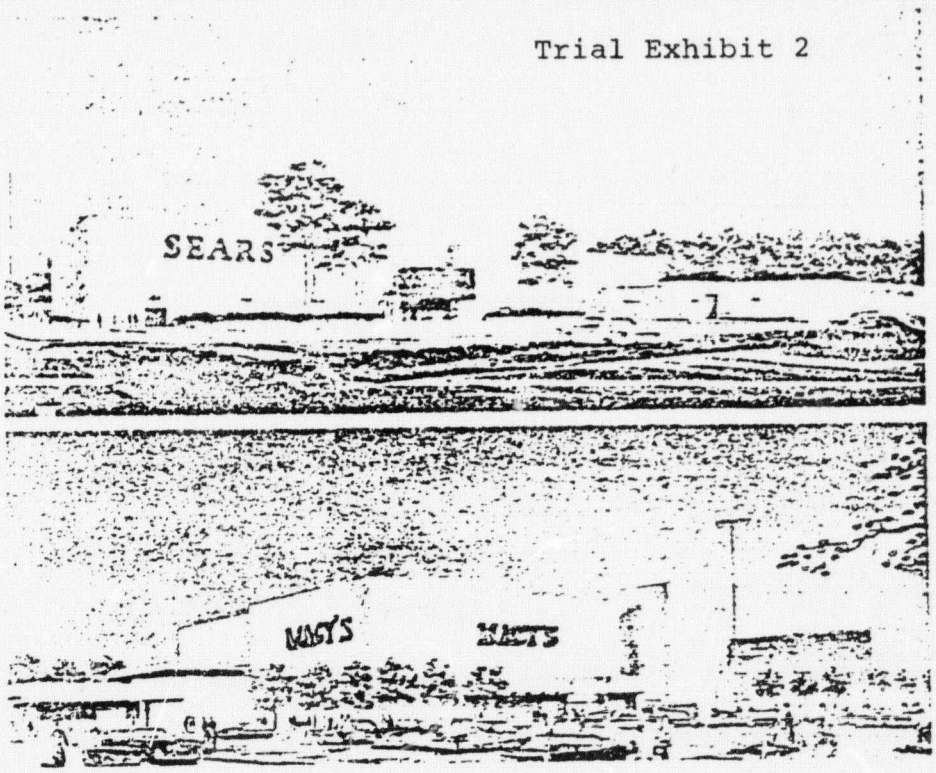
Trial Exhibit 2

president of Feist & Feist, the real estate firm that is developing the 124-acre Staten Island Mall at the heart of the Borough. "It is the most exciting business frontier in the state and perhaps the Northeast — a partly urban, partly suburban borough that, by itself, ranks 46th in buying power among the 200 U.S. cities leading in total income."

According to Sales Management's 1971 Survey of Buying Power, Staten Island's estimated net effective buying income of $1,120,208,000 placed it ahead of such cities as Rochester, N.Y.; Yonkers, N.Y.; Sacramento, Cal.; Miami, Fla.; and Akron, Ohio.

Although Staten Island's buying power is remarkable, figures show that the borough lags in retail sales. For example, it is behind Miami, which is 33rd; Rochester, 44th; Sacramento, 52nd; Akron, 65th; and Yonkers, 78th. In fact, Staten Island, which is 46th in buying power, ranks 91st in retail sales. Staten Islanders leave their island when they go shopping, but Staten Island Mall is expected to change all that.

Borough President Robert T. Connor put it this way: "As the population of our island increases at record proportions, it is necessary that the conveniences of living and additional employment opportunities are made available for the residents of the fastest growing borough. Staten Island Mall, which will be an important new downtown for the borough, will provide both." ● ●



Artist renderings of the Sears, Roebuck Co. store and the Macy's store which will anchor Staten Island Mall. Two other department stores will join them in the 2.8 million square foot mall.

Automotive Center Will be One of 50 Departments at Staten Island Sears

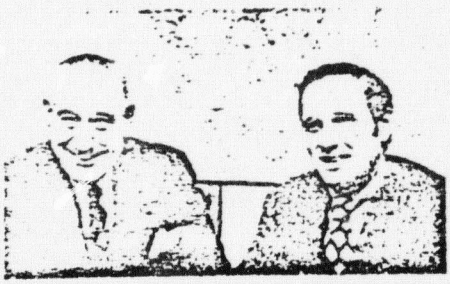
Sears, Roebuck and Company's store will be at the opposite end of the Staten Island Mall from Macy's, set on a 14-acre site. Automobiles and their problems play a large role in Sears merchandising and the 187,233 square foot store will have an accompanying automotive center capable of handling 21 cars. The automotive services to be offered include the installation of tires, batteries, radios, tape recorders, seat belts, alternators, regulators, carburetors, spark plugs, air conditioners, complete exhaust systems, and brakes. The Sears automotive personnel will be able to do tuneups, wheel balancing and alignments, front end repairs, lubrications and oil changes.

Sears' two-story building will contain 50 different departments.

"The Staten Island Mall store is the result of years of research and planning. All statistics — population, retail, sales, economic potential — pointed to the need for this new Sears department store," said James A. Milne, general manager of Sears retail operations in the metropolitan New York area and northern New Jersey. "We are most optimistic concerning our future in the Staten Island Mall."

Architects for the Sears store are Abbott, Merkt & Co., and the general contractor is Rand Construction Co.

Sears recently named Robert J. Sokolowski manager of its Staten Island Mall store. Mr. Sokolowski, who has been with the company since 1956, has managed the Sears stores in Rockville Centre and on Fordham Road. ● ● ●



Irving Feist (left) and his son John are President and Vice President of Feist & Feist, the complete-service real estate firm that is developing Staten Island Mall with associated investors.

Macy's Plans Late '72 Opening

Nearing completion at Staten Island Mall is the first Macy's store on Staten Island. With its opening before the end of the year, the store will provide Macy's with outlets in all five New York City boroughs. "Our move emphasizes our belief in the health and future of New York City," said K. Wade Bennett, President of Macy's New York Division.

The Macy's at Staten Island Mall will be a three-story steel frame building with a split concrete block and brick exterior. The 233,530 square foot interior will develop further the intimacy of the shop concept, in which departments and areas within them are carefully delineated to help simplify selection of merchandise for shoppers. Besides the traditional departments, there will be a budget store, snack bar and restaurant as well as adjacent outdoor selling area.

It is estimated that about five hundred persons will be employed in Macy's Staten Island, recruited primarily from the area. When completed, the entire 2.8 million square foot mall and convenience center will employ about 4,500 persons.

This is the third time that Sears and Macy's have gone jointly into a major shopping center. Their other two ventures are in the tri-city area of Albany, Schenectady and Troy and in Smithhaven.

Architect of Macy's Staten Island is Welton Becket and the general contractor is F. Briscoe and Company.

Manager of the new Macy's store will be Abraham Fried. Mr. Fried joined Macy's as a management trainee in 1947. ● ● ●

E 48

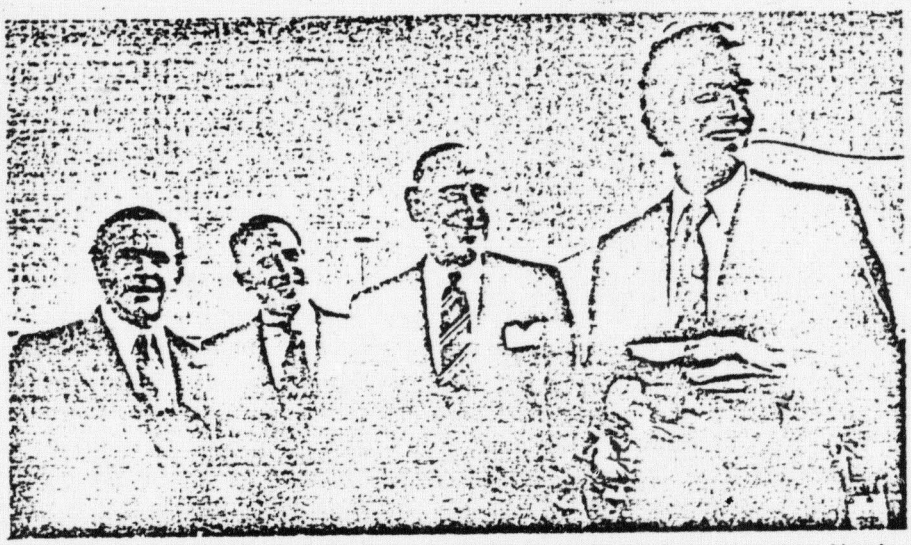
Trial Exhibit 3 -
November, 1972
Staten Island Mall
circular

STATEN ISLAND Mall

EXHIBIT 15B
D
1/10/74 W.S.

VOLUME 1, NO. 2 NOVEMBER, 1972

MACY'S OPENS; SEARS IS NEXT



New York Mayor John V. Lindsay beams as Staten Island Mall's first major store, Macy's, is open. With the mayor is (L to R) Al Warner, John Feist and Irving Feist. They are mall general manager, vice president and president, respectively, of Feist & Feist, mall developers.

Shopping Center Set for Opening March 1, 1973

Staten Island Mall took a giant step forward in early October with the opening of Macy's department store.

The three-level, 235,000 square foot store now anchors one end of the giant retail center that, when completed, will be the largest enclosed shopping mall in New York City.

Rising at the other end of the mall is a 188,000 square foot Sears, Roebuck & Co. department store. Completion is scheduled for early next year.

The dual-level, climate-controlled mall that separates the two major stores is scheduled to open next Spring. It will contain some 140 specialty shops. Two other department stores also are planned for Staten Island Mall, which will serve a trading area estimated to be in excess of three quarters of a million persons. Site is 124 acres.

Feist & Feist, developers of the mall with associated investors, said that leasing has surpassed the 50 per cent mark. (See separate story for some of stores scheduled to open).

In its first phase, the mall will provide parking for 5,500 cars. It also will employ an estimated 4,500 persons. Macy's recruited about 600 persons for its first Staten Island store, virtually all of them from the Borough of Richmond.

The Macy's opening was attended by several thousand shoppers and many public and business officials. The V.I.P. list included New York Mayor Lindsay, Staten Island Borough President Robert Connor, Economic Development Administrator Ken Patton, Environmental Protection Agency Commissioner Jerome Kretchmer, U.S. Congressman John Murphy, State Senator John Marchi, City Councilmen Edward Curry and James Smith and Assemblyman Louis Russo.

Continued on Page 2

Connor Lauds Mall Developer, Stores

Staten Island Borough President Robert T. Connor expressed gratification and enthusiasm for the Staten Island Mall.

Here are exerpts from his remarks:

"At full development, Staten Island Mall will employ approximately 4,500 people. Creation of this major shopping center in the metropolitan area demonstrates the belief of both Macy's and Sears — as well as some 140 other great stores — in the strength and future of our borough's remarkable retailing potential.

"It emphasizes the importance to an area of a healthy and competitive retail effort in order to give customers the greatest shopping advantages.

"Staten Island is fortunate to have developers as experienced and forward-looking as Feist & Feist developing the area."

Melville to Open Six Key Stores

Melville, the publicly traded company whose 1971 sales set a record of more than a half-billion dollars, has leased six stores at Staten Island Mall.

The stores will represent six footwear and clothing divisions of Melville and comprise more than 15,000 square feet of space.

We chose Staten Island Mall, said William Sperry, Melville's vice president for corporate development, "because that's where the business is being done." He also cited the expansion potential for business at the key location.

The six Melville stores are: Vanguard Shoes, which will sell the famous Bally of Switzerland footwear; Foxmoor Casuals, women's apparel; Miles Shoes; Thom McAn Shoes; Chess King, young men's apparel, and Consumer Value Stores (CVS), health and beauty aids.

P1 EX 3

Part of early morning opening day crowd at Macy's, one of the department stores that will anchor Staten Island Mall. Sears will provide another anchor when it opens early next year. To date, more than half of the 1.8 million square foot shopping center has been leased.

Representing Macy's was K. Wade Bennett, president of Macy's New York. Irving Feist, president of Feist & Feist, represented the developers. Also at the opening ceremonies were John Feist, vice president of the firm, and Albert Warner, general manager of Staten Island Mall.

Mayor Lindsay called Feist and Feist "great developers" and added, "Staten Island Mall shows what the business community and the public community can do working together."

Borough President Connor told the opening day shoppers, officials and press that the entire mall was progressing on schedule and would open on target next spring. He also cited the job opportunities the mall was bringing to the people of his borough.

Like most exciting events, the Macy's opening had its share of surprises. Three children became lost, all of them belonging to the same mother. Mr. Bennett, with the aid of his microphone, got the family together again.

The Macy's store was designed by Welton Becket and Associates, master planners for the entire mall. Planned for Macy's but not yet open are a restaurant and a rooftop garden and patio shop.

The mall is situated at the intersection of Richmond Avenue and Richmond Hill Road in the geographical center of Staten Island. Macy's is located at the Richmond Hill Road end of the complex.

John Feist reported that all of the structural steel work at the site is in place.

He also said that half of the roof and all of the second-level slabs were poured and completed and that more than half of all the exterior walls were now in place.

When completed, the mall will cover 2.8 million square feet, including 1,000,000 square feet of commercial space. It will take the shape of a cruciform configuration, with department stores at the end of each axis.

Retail outlets will be placed within two-level malls, enclosed and weather-controlled with dramatic lighting to emphasize the indoor qualities of the area.

Focus of the mall interior will be a central court suspended between mall levels and visible from both with a stage for exhibits, entertainment and community events.

President Bennett of Macy's expressed the outlook for the entire Staten Island Mall when he said at his store's opening: "We think our new Macy's is a pacesetter in contemporary design for mass merchandising." Macy's hours will be 10 a.m. to 9:30 p.m. six days a week.

Macy's President is Enthusiastic

K. Wade Bennett, president of Macy's New York, said: "The enthusiasm in the community with which the new Macy's in Staten Island has been received has been far beyond our expectations. This is evidenced by the excellent sales figures and the heavy traffic."

Mr. Bennett further stated, "We are looking forward to the opening of Sears and the 140 or so other fine specialty stores which will indeed make the Staten Island Mall one of the most outstanding shopping centers in the country."

Growing List of Outlets

Scores of national and local retail chains have leased stores at Staten Island Mall since construction of the development was announced. Here is a partial list:

Lerner's Shop, Walden Books, J. G. Music Center, National Shoes, Kinney Shoes, National Shirt, N. R. J. Pretzels, Animals 'n Things, Tinder Box, Nichols Striderite Shoes, Orange Bowl, East River Savings Bank, Fifth Avenue Cards, Chess King, C. V. S. Drug, Foxmoor Clothes, Miles Shoe, Thom McAn, Vanguard Shoe, Vincent Jewelers, New York and Suburban Savings and Loan Association, Schonfield Decorators, Kaufman Brothers Toys, Littman Jewelers, Home Decor, Naturalizer Shoes, Wicks 'n Sticks, Possibilities, Inc., Hobby Crafts, Cheese Villa, Sgarlato Deli, Parnassus Boutique, Karmelkorn and two Baskin-Robbins Ice Cream Stores.

Sears Will Be A 2nd 'Anchor'

The Sears, Roebuck and Company outlet taking shape at the southern end of the mall will provide a second anchor for the specialty shops between the two major department stores.

A Sears' spokesman said the store will open in the early Spring of next year.

It will contain 50 merchandise departments in two levels.

Another feature will be a 21-car automotive center. It will offer such services as installation of tires, batteries, radios, tape recorders, seat belts, alternators, regulators, carburetors, spark plugs and air conditioners as well as complete exhaust system, brake, tuneup, wheel balancing, alignment, front end, lubrication and oil change services.

Warner is Named General Manager

Albert "Al" Warner, who began his career in retailing 28 years ago, has been named general manager of Staten Island Mall.

For the past 10 years, he served as sales promotion director at Cross-County Center, Yonkers, N.Y., and at Parkdale Plaza, Corpus Christi, Tex.

Feist & Feist, developers with associated investors of Staten Island Mall, is the managing agent of those two centers.

"Al is a retailer's retailer," said John Feist, vice president of the development firm, in announcing the Warner appointment. "He brings to this job a world of shopping center experience. And he can speak to the merchant and the developer with equal knowledge and expertise."

Al Warner: 28 years' experience in retailing and promotion.

Warner has been an active member of the International Council of Shopping Centers since its creation in 1957.

E50
Trial Exhibit 5 - Letter dated
December 13, 1972 from J.F. Kelly
to Dale Kelly

Exhibit 18

Dale Kelly

G. A. Michaelson
D. F. Minahan

December 13, 1972

J. F. Kelly

Staten Island Mall

DEFT'S EXHIBIT 4 FOR IDENT.
DATE 7/30/75 BP

Dear Dale:

Thanks for the tour of Staten Island and the northern New Jersey traffic jams.

I spoke with George Kirtland of Feist & Feist and he stated that his company was unwilling to accept a base rent of less than $7.50/sq.ft. Combined with the real estate and common area maintenance charges, this would result in an annual rent of $31,637. At this rental we would have to have retail sales of $632,740/year to achieve a 5% rent factor. Further, we would be faced with a 10% increase as soon as the next department store is built.

I agree that this is a good location but I'm not willing to recommend that the Company get involved at this price. Therefore, I'm afraid we'll have to pass this deal up unless you have a dealer who wants to take it on his own. Please let me know if I can be of any further assistance.

Best wishes for a Merry Christmas and a Happy New Year!

J. F. Kelly

JFK/nm

E 51

Trial Exhibit 6 - September 14, 1972 leasing report

This Month	This Month	Letters of Intent	Arranged

Leist & Leist

Signed, Arranged & Combined rents

Exhibit 2a1

	To Tenants						
	Area	Rent		Area	Rent		
100%							
90%							
80%							
70%							
60%							63.69
50%							
40%					44.69		
30%							
20%							
10%			19.01				
0%							

P-EX 6

PLF. EX. TO Pl. J.F. 3/8/76

Project Staten Island Mall Date 9/14/7?

	Leases Signed (1)			Leases Sent To Tenants (2)			To Be Leased			Total 1 2 3					
	Area	Rate	Rent	Area	Rate	Rent	Area	Rate	Rent	Area	Rate	Rent	Area	Rate	Rent
RETAIL															
Lower Mall	65,531			72,465			65,004			203,000			203,000		
Upper Mall	14,318			115,188			87,494			217,000			217,000		
Kiosk															
Center Court Shops															
Misc.															
Total	79,849			187,653			152,498			420,000			420,000		
	Area	Rate	Total												
Total Tenant Allowance															
Lower Level	137,996														
Upper Level	129,506														
Total	267,502														

Trial Exhibit 6

E 52

E 53

Trial Exhibit 7 - Leasing summary

1972	LOCATION	NAME	SQUARE FEET (400)
May 12, 1972	108	Platter Plus	5067
May 26, 1972	139	Kinney Shoes	3060
May 26, 1972	151	National Shoe	2857
			(10984)
June 9, 1972	109	Lerner Shops	12110
June 11, 1972	135	Vincent Jewelry	3060
June 13, 1972	125	National Shirt	2966
June 19, 1972	130	Walden Books	6138
June 29, 1972	115B.	Animals & Things	3868
			(28142) (39126)
July 10, 1972	129	Nichols Stride Rite	1578
July 11, 1972	245	The Tinder Box	630
July 25, 1972	241	Bavarian Pretzel	736 (~~40070~~)
July 31, 1972	119	Orange Bowl	910
			(3854) (42980)
August 8, 1972	154	East River Savings Bank	8184
August 8, 1972	254	New York Surburban S & L	1860
August 16, 1972	224	K & B Hobby	3812
August 24, 1972	152	Fifth Ave. Card Shop	2443
August 25, 1972	204	Hobby - Crafts	1240
			(17539) (60519)
September 1, 1972	255	Littman Jewelers	1080

E 54
Trial Exhibit 7

	DATE 1972	LOCATION	NAME	SQUARE FEET	
19)	September 20, 1972	122	Schonfeld	4300	
20)	September 20, 1972	137A	Sparlato's Deli	2332	
21)	September 29, 1972	128	C. V. S.	3937	
22)	September 29, 1972	146	Karmel Horn	510	
				(12159) (72678)	18
23)	October 3, 1972	141	Vangreard	768	
24)	October 3, 1972	118	Wiches & Stickes	910	
25)	October 3, 1972	107	Miles	2160	
26)	October 3, 1972	110A	Chess King	2153	
27)	October 3, 1972	104	Fox moor	2460	
28)	October 3, 1972	137	Thom McAn	3795	
29)	October 4, 1972	227	Verrazzano Restuarant	2873	
30)	October 19, 1972	156	Furniture-in-the-Raw	1080	
31)	October 19, 1972	114	Just Shirts	825	
32)	October 19, 1972	114 & 211	Baskin Robbins	744	
33)	October 25, 1972	149	Flagg Brothers	1200	
34)	October 25, 1972	112	Hardy	1224	
35)	October 25, 1972	209	Kute-N-Pretty	5328	
36)	October 26, 1972	110	Baker Shoes/Jeans	4317	
				(29837) (102515)	25
37)	November 1, 1972	147A	Goff Jewelry	975	
38)	November 2, 1972	111A	Bun & Burger	2160	

E 55

Trial Exhibit 7

	DATE 1972	LOCATION	NAME	SQUARE FEET	
39)	November 3, 1972	225	Peking Gardens	4004	
40)	November 10, 1972	153	Benhill Shirts	2582	
41)	November 13, 1972	147	General Nutrition	974	
42)	November 21, 1972	247A	Morse Shoes	2760	
43)	November 22, 1972	154A	Sterling Optical	1830	
44)	November 22, 1972	131	Asia Craftsmen	2893	
45)	November 22, 1972	210	Card-O-Rama	4450	
46)	November 30, 1972	149A	No-Name	2451	
				(25079) (127594)	31
47)	December 1, 1972	222	Tie City	940	
48)	December 8, 1972	155	Stuart's (Marion's)	8098	
49)	December 21, 1972	237	Florsheim Shoes	1340	
				(10378) (137972)	34

Trial Exhibit 7

E 56

	DATE 1973	LOCATION	NAME	SQUARE FEET	
1)	January 11, 1973	142A	Dante-Calmus	620	
2)	January 11, 1973	215A	Fashion Optical	588	
3)	January 16, 1973	205	Herman's	17781	
4)	January 17, 1973	133A	Farrell's Ice Cream	5327	
5)	January 19, 1973	228	Roaman's	5529	
6)	January 22, 1973	102	Charming Shoppes	7600	
7)	January 29, 1973	207	Wiss Jewelry	2477	
8)	January 31, 1973	220A	Peter Moralo	2061	
				(41983) (179955)	45
9)	March 13, 1973	K10sk K1 & K3"D"	Jo-Ann Nuts/Candies	180	
10)	March 15, 1973	132	Pickwick Village	2060	
11)	March 16, 1973	250	Archie Jacobson	7271	
12)	March 16, 1973	159	Churchill Perlman	4749	
				(14260) (194215)	48
13)	April 2, 1973	248	Brooks	3380	
14)	April 16, 1973	K10sk #8	Things Remembered	200	
15)	April 16, 1973	138	The Gap	2895	
16)	April 23, 1973	132A	Dr. Scholl's	1829	
				(8304) (202519)	50
17)	May 4, 1973	150	G & G	2288	
18)	May 4, 1973	201	Magnaleasing	3608	
19)	May 8, 1973	226	Zum Zum	1917	

E 57

Trial Exhibit 7

	DATE 1973	LOCATION	NAME	SQUARE FEET	
20)	May 24, 1973	121	Personalities	1739	
21)	May 24, 1973	208	Hickory Farms	2663	
				(12215) (214734)	53
22)	June 15, 1973	256	So-Fro Fabrics	5872	
23)	June 19, 1973	144	Renaldi's	2060	
				(7932) (222666)	55
24)	July 2, 1973	K10sk #K4C	Animal Kingdom	270	
25)	July 2, 1973	148	The Gift Shop	1984	
26)	July 17, 1973	202	VIP Yarns	3688	
27)	July 20, 1973	247	McDonalds	3670	
28)	July 27, 1973	217A	Bernard Wigs	630	
				(10242) (232908)	58
29)	August 10, 1973	257	Franklin Simon	8805	
30)	August 16, 1973	140	Tiffany's Bakeries	1288	
31)	August 28, 1973	244	Paperback Bookshop	2189	
				(12282) (245190)	61
32)	September 10, 1973	120	Sid's Pants	1360	
33)	September 13, 1973	K10sk #11	Blow-Up Shop	180	
34)	September 14, 1973	208A	She	1180	
				(2720) (247910)	70
35)	October 5, 1973	W101	Spencer Gifts	3018	
36)	October 5, 1973	253	Bonds	7152	

Trial Exhibit 7

E 58

	DATE 1973	LOCATION	NAME	SQUARE FEET
37)	October 26, 1973	249	Maternally Yours	1155
				(11325) (259235)
38)	November 12, 1973	251	Casual Corner	7550
39)	November 29, 1973	206	Red Cross Shoe	2318
40)	December 6, 1973	127	Milcraft	2440
41)	December 10, 1973	143	Security National Bank	2825
42)	December 11, 1973	143	Mr. & Mrs. Jack Oksman	465
43)	December 11, 1973	134A	Time-Out	1546
44)	December 13, 1973	142	DeSimone Travel	642

6

Trial Exhibit 7

E 59

DATE 1974-1975	LOCATION	NAME	SQUARE FEET
1) January 7, 1974	117	Butterfly Gifts	615
2) January 28, 1974	206A	The Red Bull	6551
3) April 26, 1974	113A	Hammond Organ Studios	930
4) August 12, 1974	246	Mr. Waffle	630
5) August 19, 1974	K10sk #K7B	Carol Boutique	360
1) February 28, 1975	206B	Casual Closet	2310
2) March 18, 1975	235	The Fire Place	
3) May 15, 1975	113	Swissland	1050
4) June 24, 1975	223	Male Diminsion	940
5) June 30, 1975	124	Dy-No-Lite Fixtures	1710
6) August 22, 1975	116A	Yogi Shop	280
7) August 25, 1975	243	India Fashion	1100

NOTE: Pages E 60 and E 61 had inadvertently duplicated Pages E 51 and E 52 and are, therefore, omitted.

E 62
Trial Exhibit 9-August 2, 1972 memo from D. Faughnan to Irving Feist and John Feist

20M-11-71-ROYAL

INTERNAL CORRESPONDENCE

To Irving Feist & John Feist

From D. Faughnan

Date 8/2/72 Subject STATEN ISLAND PROJECTIONS

Using 627,000 square feet as the gross leaseable area of Mall I and II, the Convenience Center and Kiosks and Center Court, I have computed and indicated on the attached schedules, dollars per square foot of gross leaseable area. Also attached is a statistical table out of the "Dollars & Cents of Shopping Centers: 1972".

As you can see, our dollars of income and expense per square foot of gross leaseable area are vastly different from this and other similar tables. We should be in a position to justify our cost and to adequately explain the reasons for the differences.

Our projections show a recovery of $3,304,000 from tenants for taxes, utility charges and common area charges. Using 627,000 square feet as a denominator, this represents an additional $5.33 per square foot cost over minimum rents. I think we should also ask ourselves whether it is economically feasible for our tenants to carry such high costs.

PLF. 76-7
3/17/76 H

Exhibit 334

Pl Ex 9

STATEN ISLAND MALL
ESTIMATED OPERATING EXPENSES
MALL I, II AND CONVENIENCE CENTER
FIRST FULL YEAR

Real Estate Taxes			($2.15)	$1,350,000
Utilities:				
Electric	($.97)	$611,000		
Gas (heating and cooling)	(.27)	168,000		
HVAC maintenance	(.09)	56,000		
Sewage treatment	(.04)	25,000		
Water	(.04)	23,000	(1.41)	883,000
Services:				
Cleaning	(.46)	288,000		
Protection	(.46)	287,000		
Engineers and electrician	(.16)	103,000		
Snow removal	(.07)	44,000		
Landscaping	(.07)	42,000	(1.22)	764,000
Repairs, Maintenance & Supplies:				
Electrical, elevators, plumbing, painting, glazing, parking areas and general	(.14)	86,000		
Structural and exterior	(.01)	10,000	(.15)	96,000
Insurance:				
Property	(.03)	21,000		
Liability	(.03)	15,000	(.06)	36,000
Promotional Expenses:				
Merchants Association	(.04)	26,000		
Advertising and special promotions	(.07)	42,000	(.11)	68,000
General and Administrative Expenses:				
Salaries - manager, secretarial, bookkeeping and other administrative	(.11)	69,000		
Employee benefits and payroll taxes	(.02)	12,000		
Professional fees	(.03)	15,000		
Telephone	(.01)	8,000		
Office supplies	(.01)	7,000		
Miscellaneous	(.03)	20,000	(.21)	131,000
Management Fee			(.12)	75,000
Leasing Commissions			(.24)	150,000
			($5.67)	$3,553,000

Trial Exhibit 9

STATEN ISLAND MALL
ESTIMATED INCOME & EXPENSE

		Prior To Opening Of 3rd Dept. Store		After Opening Of 3rd Dept. Store
Income	($14.05)	$8,809,000	($14.93)	$9,359,000
Operating, general & administrative expenses	(5.67)	3,553,000	(5.67)	3,553,000
Net income before depreciation, amortization of debt expense, interest and income taxes	($ 8.38)	$5,256,000	($ 9.26)	$5,806,000

Trial Exhibit 9

STATEN ISLAND MALL
ESTIMATED INCOME & EXPENSE

		Prior To Opening Of 3rd Dept. Store		After Opening Of 3rd Dept. Store
Income	($13.82)	$8,667,000	($14.68)	$9,202,000
Operating, general & administrative expenses	(5.67)	3,553,000	(5.67)	3,553,000
Net income before depreciation, amortization of debt expense, interest and income taxes	($ 8.15)	$5,114,000	($ 9.01)	$5,649,000

Trial Exhibit 9

STATEN ISLAND MALL
COMPARISON OF ESTIMATED CONSTRUCTION COSTS
JULY 1971 WITH JULY 1972

	JULY 1971	JULY 1972
Land	$ 5,923,000	$ 6,062,000
Site Work	2,936,000	4,211,000
Construction:		
Mall I	13,442,000	14,800,000
Convenience Center	1,630,000	1,520,000
Mall II	3,843,000	3,727,000
Non Structural	1,224,000	3,504,000
Real Estate Taxes:		
Land	767,000	787,000
Buildings	128,000	31,000
Interest	3,119,000	2,736,000
Contingency	1,137,000	
	$34,149,000	$37,378,000

Trial Exhibit 9

Regional Centers in Northeast

Table 2-2

Regional Shopping Centers in the Northeast Operating Results Per Square Foot of GLA

Numbers of Centers in Sample: 17	Dollars per square foot of GLA: Median	Dollars per square foot of GLA: Middle-range	Percent of total receipts: Median	Percent of total receipts: Middle-range
Gross Leasable Area	604,577	470,047-813,061		
Tenant Sales	$60.22	$57.16-$69.08		
Operating Receipts:				
rent	$ 2.03	$ 1.80-$ 3.32	83.7%	76.6%- 90.7%
common area charges	.27	.13- .32	7.9%	4.7%- 9.9%
other charges	.39	.11- .47	9.5%	4.4%- 14.3%
Total Operating Receipts	$ 2.68	$ 2.12-$ 3.82	100.0%	100.0%-100.0%
Operating Expenses:				
building maintenance	$ .02	$ .01-$ .19	.7%	.1%- 4.3%
parking lot, mall and other public areas	.28	.13- .38	7.9%	4.9%- 12.5%
central utility systems	.17	.09- .26	3.9%	3.3%- 6.4%
office area services	—	— —	—	— —
Total Maintenance and Housekeeping Expenses	$ .50	$ .25-$ .63	15.1%	9.2%- 19.6%
advertising and promotion	$ .03	$ .03-$ .06	1.2%	.7%- 1.6%
real estate taxes	$ .32	$ .20- .36	11.7%	6.8%- 15.4%
insurance	.04	.03- .06	1.5%	.5%- 2.1%
general and administrative	.15	.10- .21	5.7%	2.8%- 8.3%
Total Operating Expenses	$ 1.07	$ .83-$ 1.32	40.7%	22.7%- 46.7%
Operating Balance	$ 1.51	$ 1.07-$ 2.83	59.3%	52.2%- 73.4%

Table 2-3

Comparison of Sales and Rent of Principal Tenants in Regional Centers and in Northeastern Regional Centers

Tenant Classification	Sales volume per square foot GLA: All regional median	Sales volume per square foot GLA: Northeastern regional median	Total rent per square foot GLA: All regional median	Total rent per square foot GLA: Northeastern regional median
Department stores	$55.88	$49.01	$1.46	$1.47
Junior department stores	50.63	55.69	2.00	1.78
Variety stores	34.23	41.30	1.99	1.68
Supermarkets	92.51	97.84	1.74	1.73
Drug stores	65.45	59.23	2.25	2.82

Trial Exhibit 10 - October 16, 1972 memo from Edward Fraher to Irving Feist

Exhibit 344

2SM-8-72-ROYAL

INTERNAL CORRESPONDENCE

To Irving Feist

From Edward Fraher

Date October 16, 1972 Subject

The attached contains the revisions made today.

cc: J. Feist
B. Needell
D. Faughnan

pl 86 mt
3/17/76

Pl Ex 10

Trial Exhibit 10

STATEN ISLAND MALL
3rd DEPARTMENT STORE
ANTICIPATED COSTS

Land		
17.98 Acres @ $60,000		1,079,000.00
Interest from 1/1/70 to 2/1/73		242,550.14
Legal Fees		50,000.00
Transfer Taxes Etc.		25,000.00
Title Insurance		5,500.00
Other Expenses		20,000.00
3rd Dept. Store Share Macy/Sears		
Site Work & Development Cost Before 11/19/72		127,643.76
Real Estate Taxes from 1/1/70 To 2/1/73		180,000.00
Share of Initial Site Work Per R.E.A.		
Sewerage Treatment Plant	42,390.43	
Sanitary Lines	29,463.18	
Water Mains	32,908.36	
Storm Drainage - On Site	81,464.57	
Site Electric	43,528.57	
Paving - Lots Etc.	- 0 -	
Ring Road	30,000.00	
Landscaping	- 0 -	
Retaining Walls	15,409.44	
Additional Grading	10,968.10	
Insurance	11,129.04	
Design - On Site	64,443.54	
Off Site	14,405.95	
Storm Drainage - Off Site	398.80	
	1,508.78	
	54,617.90	
Contribution to Highway Cost	82,904.84	
	515,541.50	
General Conditions	45,000.00	
Diesel Fee	15,000.00	
Contingency (Proportionate Share)	25,000.00	
		600,541.50
Interest on Share of Initial Site Work From 9/15/71 - 2/1/73		37,125.00
		2,367,360.40

Trial Exhibit 10

STATEN ISLAND MALL
COMPARISON OF ESTIMATED CONSTRUCTION COSTS
JULY 1971 WITH JULY 1972

	JULY 1971	JULY 1972
Land	$ 5,923,000	$ 6,062,000
Site Work	2,936,000	4,211,000
Construction:		
Mall I	13,442,000	14,800,000
Convenience Center	1,630,000	1,520,000
Mall II	3,843,000	3,727,000
Non Structural	1,224,000	3,504,000
Real Estate Taxes:		
Land	767,000	787,000
Buildings	128,000	31,000
Interest	3,119,000	2,736,000
Contingency	1,137,000	
	$34,149,000	$37,378,000

Trial Exhibit 10

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED INCOME & EXPENSE

	Prior To Opening Of 3rd Dept.Store	After Opening Of 3rd Dept.Store
Income	$7,121,000	$9,134,000
Operating, general & administrative expenses	3,309,000	3,724 000
Net income before depreciation, amortization of debt expense, interest and income taxes	$3,812,000	$5,410,000

Trial Exhibit 10

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED INCOME

	Prior To Opening Of 3rd Dept.Store	After Opening Of 3rd Dept.Store
Rental Income:		
Mall I - 427,000 sq. ft. @ $8.50 and $9.35, respectively	$3,629,000	$3,992,000
Mall II - 115,000 sq. ft. @ $10.00		1,150,000
Convenience Center - 80,000 sq. ft. @ $6.00 and $6.60, respectively	480,000	528,000
Kiosks and Center Court - 5,100 sq. ft. @ $20.00 and $22.00, respectively	102,000	112,000
Total Rental Income *	4,211,000	5,782,000
Tax Rent	973,000	1,193,000
Utility Charges	911,000	1,118,000
Common Area Charges:		
Utilities	$164,000	$202,000
Services	764,000	764,000
Repairs & supplies	70,000	86,000
Insurance	12,000	15,000
Administrative overhead	151,000	160,000
	1,161,000	1,227,000
Telephone and Vending Machine Income	19,000	21,000
	7,275,000	9,341,000
Vacancy Allowance	154,000	207,000
	$7,121,000	$9,134,000

* Rental income will increase $831,000 to $6,613,000 after the Fourth Department Store opens. Other escalations contained in leases provide for an estimated increase in rentals of $336,000 in the 16th and $109,000 in the 21st year.

Percentage rents are not reflected above since it is estimated that they will not become an appreciable factor until five years after opening.

Trial Exhibit 10

STATEN ISLAND MALL
MALL I AND CONVENIENCE CENTER
ESTIMATED EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center	$1,130,000	
Undeveloped Land	166,000	$1,296,000
Utilities:		
Electric	498,000	
Gas (heating and cooling)	137,000	
HVAC maintenance	46,000	
Sewage treatment	25,000	
Water	19,000	725,000
Services:		
Cleaning	288,000	
Protection	287,000	
Engineers and electrician	103,000	
Snow removal	44,000	
Landscaping	42,000	764,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing, parking areas and general	70,000	
Structural and exterior	10,000	80,000
Insurance:		
Property	17,000	
Liability	12,000	29,000
Promotional Expenses:		
Merchants Association	25,000	
Advertising and special promotions	34,000	59,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		150,000
		$3,309,000

Trial Exhibit 10

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED OPERATING EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center	$1,350,000	
Undeveloped land	166,000	$1,516,000
Utilities:		
Electric	611,000	
Gas (heating and cooling)	168,000	
HVAC maintenance	56,000	
Sewage treatment	25,000	
Water	23,000	883,000
Services:		
Cleaning	288,000	
Protection	287,000	
Engineers and electrician	103,000	
Snow removal	44,000	
Landscaping	42,000	764,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing, parking areas and general	86,000	
Structural and exterior	10,000	96,000
Insurance:		
Property	21,000	
Liability	15,000	36,000
Promotional Expenses:		
Merchants Association	31,000	
Advertising and special promotions	42,000	73,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		150,000
		$3,724,000

Trial Exhibit 11 - December 15, 1972 memo from J. Feist to I. Feist

25M-6-72-ROYAL

CONFIDENTIAL

INTERNAL CORRESPONDENCE

To I. FEIST

From J. FEIST

Date DECEMBER 15, 1972 Subject TAXES - STATEN ISLAND MALL

Ed Fraher told me the other day that he figures the tenants' share of the taxes at Staten Island Mall for the opening year to be $2.34 per square foot.

This is something I've never heard of—we always talked about $1.00 or $1.25. If we're going to have taxes like this (in addition to the Common Area and everything else), we're certainly going to have problems with our tenants.

/mg

cc: D. Faughnan

PL EX 11

Trial Exhibit 12 - August 14, 1970 memo from John Feist to E. Fraher

RSM-8-CB-ROYAL

INTERNAL CORRESPONDENCE

cc: Mr. I. Feist
Mr. B. Grossman

To Mr. E. Fraher

From J. A. F.

Date 8/14/70 Subject Staten Island

Just wanted to let you know that the taxes on the Korvette property adjacent to our site in Staten Island are between 75¢ and 80¢ a sq. ft. This is substantially below what we thought it would be. This is just for your information.

Trial Exhibit 13-Staten Island Mall-notes to cash flow projection

STATEN ISLAND MALL
NOTES TO CASH FLOW PROJECTION

~~Exhibit 35~~

The following assumptions were made in the preparation of the attached cash flow projection:

1) It is assumed that the Mall will open some time in April and that the first full month of operations will be May 1973. The Convenience Center is projected for an August 1st opening. No consideration has been given to income or expense applicable to the portion of the month of April that the Mall is opened.

2) Levels of occupancy are estimated as follows:

May 1973 to July 1973	-	45%
August 1973 to November 1973	-	60%
December 1973 to March 1974	-	70%
April 1974 to October 1974	-	90%

3) It is assumed that all leases have the provision that requires at least 200,000 square feet of Mall space to be occupied before fixed minimum rent payments start. Thus, for the period May through July only percentage rentals are payable. The basic lease form calls for quarterly payments of percentage rentals, and although some leases will provide for semi-annual and annual payments, it is presumed here that all are payable quarterly. The amount of percentage rent for the period May through July 1973 is estimated at 25% of fixed minimum rent for the period and is shown as paid in August 1973.

4) In computing tax rents it is assumed that all leases provide that the fraction used in determining tenant's proportionate share of real estate taxes has as its denominator the greater of 75% of leaseable area or leased area. Therefore, in addition to landlord's $.25 a square foot cost for real estate taxes there has been added to landlord's cost (through reduced income) a proportionate amount of each period's real estate taxes represented by the difference between projected occupancy and 75%.

   In computing tenant's proportionate share of real estate taxes the amount of tax relating to the N.W. Parcel have been eliminated before computing tenant's share.

5) Common area charges are computed at the rate of $.60 a square foot from lease commencement date to the start of the first lease year - February 1, 1974. From February 1, 1974 on common area charges are computed at their proportionate amount (see (4) above re 75% denominator) of estimated common area costs for the lease year commencing February 1, 1974.

6) Income from common area charges from Macy and Sears have not been considered. Provisions relating to these charges must still be reviewed and evaluated.

7) Utility income and expense have not been reflected. It is expected that a profit will be realized on utility sales, however, the exact affect on cash

Trial Exhibit 13

7) flow from the payment of utility expense and the collection of related income is not as yet known. This area will need further review by our Construction Department.

8) Interest expense is based on a schedule which projects estimated construction disbursements, cumulative loan balance and interest expense. From the date the Mall opened all interest expense has been charged to operations.

9) Real estate taxes are based on estimates prepared by Ed Fraher.

10) All operating expenses have been substantially based on the report prepared in July 1972 of estimated operating expenses for the first full year of occupancy. (See copy attached)

Comments

1) The obvious problem is lack of tenants. Has every conceivable effort been made to expedite the leasing program?

2) The largest expense is interest. The relationship between permanent loan financing and operating deficit financing should be reviewed to consider whether interest costs should be capitalized as an additional construction related cost or as operating expenses. For instance, if the Fourth Department Store and Mall III are to be constructed, the interest cost applicable to their land cost and proportionate share of site costs should be capitalized rather than treated as an operating expense. In the projection presented, even some portion should have been capitalized to the extend that it related to Convenience Center costs prior to its opening on August 1, 1973.

3) Certain operating expenses such as cleaning, protection, engineers, etc. should be re-evaluated to see what can be done to reduce such costs.

Trial Exhibit 13

Stiles Island Mall
Mall I and Conference Center
Projected Cash Flow

	May 45%	June 45%	July 45%	August 60%
Percentage of Completion				
Items:				
Capital Minimum Rentals				
Mall I	-	-	-	192000
Conference Center	-	-	-	24000
Rental and Center Costs	-	-	-	6000
				223000
Mgt. Fee	29000	29000	29000	45000
Gross Area Charges	10000	10000	10000	15000
Telephone and Utility Backup		1000		1000
Construction Rate				109000
Total	39000	40000	39000	463000
Expenses:				
Utilities	24000	28000	28000	24000
Real Estate Taxes		24000		
Insurance Premiums				
Licenses	24000	24000	24000	24000
Interest	24000	24000	24000	24000
Engineering and Supervision	8000	7000	8000	9000
Snow Removal				
Landscaping	6000	7000	6000	6000
Repairs, Maintenance and Supplies		2000	2000	2000
Insurance		10000	10000	2000
Janitorial Expenses	2000	2000	2000	2000
Licenses	6000	6000	6000	6000
Employee Benefits, Payroll Taxes	1000	1000	1000	1000
Professional Fees		1000		1000
Telephone		1000		1000
Office Supplies	1000		1000	
Miscellaneous	2000	2000	2000	2000
Management Fees	6000	6000	6000	6000
Leasing Commissions				
Total	304000	549000	738000	339000
Income Gain/(Loss) Before Amortization	(265000)	(509000)	(791000)	64000
Cumulative Difference	(265000)	(774000)	(1565000)	(1001000)

Trial Exhibit 13

8	9	10	11	12	13	14
Aguilar 60%	Aiken 60%	Kimball 60%	Dennis 70%	Jenney 70%	Wilbur 70%	Kimball 70%
194000	194000	194000	274000	274000	274000	274000
26000	26000	26000	30000	30000	30000	30000
5000	5000	5000	6000	6000	6000	6000
273000	273000	273000	260000	260000	260000	260000
45000	45000	45000	54000	54000	78000	78000
15000	15000	15000	18000	18000	90000	90000
	1000		1000		1000	1000
283000	284000	283000	331000	330000	479000	479000
246000	247000	248000	269000	269000	257000	255000
276000			276000			276000
24000	24000	24000	24000	24000	24000	24000
24000	24000	24000	24000	24000	24000	24000
9000	9000	8000	7000	8000	9000	8000
				5000	10000	10000
	4000	1000	1000	1000	1000	1000
6000	7000	6000	7000	6000	7000	6000
	2000	2000	13000	15000	2000	2000
6000	6000	6000	6000	6000	6000	6000
1000	1000	1000	1000	1000	1000	1000
	1000	1000	1000	1000	1000	1000
	1000		1000	1000		1000
1000		1000		1000	1000	1000
	7000	7000		7000	3000	
6000	6000	6000	5000	5000	6000	6000
		30000	70000			30000
526000	334000	360000	587000	353000	945000	617000
(281000)	(50000)	(77000)	(258000)	(73000)	84000	(183000)
(1287000)	(1337000)	(1439000)	(1665000)	(1685000)	(1604000)	(1787000)

Trial Exhibit 13

	1974					
[illegible] 90%	[illegible] 90%	[illegible] 90%	[illegible] 90%	[illegible] 90%	[illegible] 90%	[illegible] 90%
358000	358000	358000	358000	358000	358000	358000
37000	37000	37000	37000	37000	37000	37000
7000	7000	7000	7000	7000	7000	7000
334000	334000	334000	334000	334000	334000	334000
87000	87000	87000	87000	87000	87000	87000
96000	96000	96000	96000	96000	96000	96000
		1000	1000	1000	1000	1000
518000	518000	518000	518000	518000	518000	518000
355000	355000	355000	355000	357000	357000	357000
		375000			375000	
74000	74000	74000	74000	74000	74000	74000
74000	74000	74000	74000	74000	74000	74000
[illegible]	8000	8000	8000	9000	8000	9000
9000						
4000	6000	7000	6000	6000	6000	4000
7000	6000	7000	6000	7000	[illegible]	7000
		[illegible]	10000	[illegible]		
12000	3000	[illegible]	3000	3000	10000	3000
6000	6000	[illegible]	6000	6000	6000	6000
1000	1000	1000	1000	1000	1000	1000
4000	1000	1000	1000	1000	1000	1000
1000	1000		1000	1000		1000
	1000		1000		1000	
7000	7000	4000		7000	3000	7000
7000	6000	6000	6000	6000	6000	6000
		30000			30000	
345000	347000	359000	351000	357000	357000	346000
154000	175000	(141000)	167000	161000	(141000)	172000
(1635000)	(1460000)	(1701000)	(1534000)	(1373000)	(1614000)	(1447000)

E 82

Exhibit 350

Trial Exhibit 14 - Estimated income, expense and appraisal value information

pg 93 of 3/17/76

Feist & Feist

REAL ESTATE and INSURANCE

58 Park Place, Newark, N.J. 07102

201-643-8500

To _____ Date _____

From _____

Around 1973

01 Ex 14

Trial Exhibit 14

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED INCOME, EXPENSE AND APPRAISAL VALUE

	Prior To Opening Of 3rd Dept. Store	After Opening Of 3rd Dept. Store
Income	$ 7,513,000	$ 10,205,000
Operating, general & administrative expenses	3,489,000	4,717,000
Net income before depreciation, amortization of debt expense, interest and income taxes	$ 4,024,000	$ 5,488,000
Income capitalized @ .092404	$ 43,547,000	$ 59,391,000
Phase II - 1.5 acres @ $120,000	180,000	180,000
N.W. Corner - 14.3 acres @ $125,000	1,787,000	1,787,000
Estimated Appraisal Value	$ 45,514,000	$ 61,358,000

Trial Exhibit 14

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED INCOME

	Prior To Opening Of 3rd Dept.Store	After Opening Of 3rd Dept.Store
Rental Income:		
Mall I - 427,000 sq. ft. @ $9.00 and $9.90, respectively	$3,843,000	$4,227,000
Mall II - 115,000 sq. ft. @ $10.00		1,150,000
Convenience Center - 80,000 sq. ft. @ $6.50 and $7.15, respectively	520,000	572,000
Kiosks & Center Court - 5,000 sq. ft. @ $20.00 and $22.00, respectively	100,000	110,000
Total Rental Income *	4,463,000	6,059,000
Tax Rent	1,237,000	2,119,000
Utility Charges	911,000	1,118,000
Common Area Charges:		

	Prior To 3rd Dept.Store	After 3rd Dept.Store		
Utilities	$164,000	$202,000		
Services	764,000	789,000		
Repairs & supplies	70,000	86,000		
Insurance	12,000	15,000		
Administrative overhead	151,000	164,000	1,161,000	1,256,000
Telephone and Vending Machine Income			10,000	12,000
			7,782,000	10,564,000
Vacancy Allowance			269,000	359,000
			$7,513,000	$10,205,000

* Above rentals will increase 10% or $606,000 to $6,665,000 after the Fourth Department Store opens. In addition, the construction of 103,000 sq. ft. of additional Mall space will result in $1,133,000 in rental income plus additional income from utility charges. If a Center Mall office building is constructed, it is estimated that net income will be increased by approximately $400,000.

Other escalations contained in leases provide for an increase in rentals in the 16th and 21st year.

Percentage rents are not reflected above since it is estimated that they will not become an appreciable factor until five years after opening.

STATEN ISLAND MALL
MALL I AND CONVENIENCE CENTER
ESTIMATED EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center, including land for Mall II and III	$1,365,000	
Parcel B N.W. Corner	141,000	
		$1,506,000
Utilities:		
Electric	498,000	
Gas (heating and cooling)	137,000	
HVAC maintenance	46,000	
Sewage treatment	25,000	
Water	19,000	725,000
Services:		
Cleaning	288,000	
Protection	287,000	
Engineers and electrician	103,000	
Snow removal	44,000	
Landscaping	42,000	764,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing, parking areas and general	70,000	
Structural and exterior	10,000	80,000
Insurance:		
Property	17,000	
Liability	12,000	29,000
Promotional Expenses:		
Merchants Association	25,000	
Advertising and special promotions	34,000	59,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		120,000
		$3,489,000

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED OPERATING EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center, including land for Mall II and III	$2,276,000	
Parcel B N.W. Corner	223,000	$2,499,000
Utilities:		
Electric	611,000	
Gas (heating and cooling)	168,000	
HVAC maintenance	56,000	
Sewage treatment	25,000	
Water	23,000	883,000
Services:		
Cleaning	303,000	
Protection	297,000	
Engineers and electrician	103,000	
Snow removal	44,000	
Landscaping	42,000	789,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing, parking areas and general	86,000	
Structural and exterior	10,000	96,000
Insurance:		
Property	21,000	
Liability	15,000	36,000
Promotional Expenses:		
Merchants Association	31,000	
Advertising and special promotions	42,000	73,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		135,000
		$4,717,000

Trial Exhibit 14

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED INCOME, EXPENSE AND APPRAISAL VALUE

Notes

(1) As used in the attached analysis, the 3rd Department Store is to be located in the space previously identified as the 4th Department Store space, and the 4th Department Store is to be located in the space previously identified as the 3rd Department Store space.

Trial Exhibit 14

STATEN ISLAND MALL
ESTIMATED INCOME & EXPENSE

	Prior To Opening Of 3rd Dept. Store	After Opening Of 3rd Dept. Store	After Opening Of 4th Dept. Store
Income	$7,249,000	$9,279,000	$11,938,000
Operating, general & administrative expenses	3,309,000	3,749,000	4,806,000
Net income before depreciation, amortization of debt expense, interest and income taxes	$3,940,000	$5,530,000	$ 7,132,000

STATEN ISLAND MALL
ESTIMATED INCOME

	Prior To Opening Of 3rd Dept.Store	After Opening Of 3rd Dept.Store	After Opening Of 4th Dept.Store
Mall I - 427,000 sq. ft. @ $9.00, $9.90 and $10.89, respectively	$3,843,000	$4,227,000	$4,650,000
Mall II - 115,000 sq. ft. @ $10.00 and $11.00, respectively		1,150,000	1,265,000
Mall III - 103,000 sq. ft. @ $11.00			1,133,000
Convenience Center - 80,000 sq. ft. @ $6.50, $7.15 and $7.86, respectively	520,000	572,000	629,000
Kiosks & Center Court - 5,000 sq. ft. @ $20.00, $22.00 and $24.20, respectively	100,000	110,000	121,000
Total Rental Income	4,463,000	6,059,000	7,798,000
Tax Rent	973,000	1,193,000	1,935,000
Utility Charges	911,000	1,118,000	1,302,000
Common Area Charges:			
Utilities	164,000	202,000	235,000
Services	764,000	789,000	814,000
Repairs & supplies	70,000	86,000	102,000
Insurance	12,000	15,000	18,000
Administrative overhead	151,000	164,000	175,000
Telephone and Vending Machine Income	10,000	12,000	14,000
	7,518,000	9,638,000	12,393,000
Vacancy Allowance	269,000	359,000	455,000
	$7,249,000	$9,279,000	$11,938,000

Notes:

If a Center Mall office building is constructed, it is estimated that net income will be increased by approximately $400,000.

Escalations contained in leases provide for an increase in rentals in the 16th and 21st year.

Percentage rents are not reflected since it is estimated that they will not become an appreciable factor until five years after opening. When evaluating income shown after opening of Fourth Department Store the effects of such rentals should be considered.

The Fourth Department Store may not be opened until five years after the opening of Mall I. For purposes of this analysis, expenses shown after the opening of the Fourth Department Store which are recoverable from tenants reflect only increases resulting from the addition of Mall store space and do not reflect increases resulting from inflationary factors.

STATEN ISLAND MALL
MALL I AND CONVENIENCE CENTER
ESTIMATED EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center, including land for Mall II and III	$1,130,000	
Parcel B N.W. Corner	166,000	$1,296,000
Utilities:		
Electric	498,000	
Gas (heating and cooling)	137,000	
HVAC maintenance	46,000	
Sewage treatment	25,000	
Water	19,000	725,000
Services:		
Cleaning	288,000	
Protection	287,000	
Engineers and electrician	103,000	
Snow removal	44,000	
Landscaping	42,000	764,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing, parking areas and general	70,000	
Structural and exterior	10,000	80,000
Insurance:		
Property	17,000	
Liability	12,000	29,000
Promotional Expenses:		
Merchants Association	25,000	
Advertising and special promotions	34,000	59,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		150,000
		$3,309,000

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED OPERATING EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center, including land for Mall II and III	$1,350,000	
Parcel B N.W. Corner	166,000	$1,516,000
Utilities:		
Electric	611,000	
Gas (heating and cooling)	168,000	
HVAC maintenance	56,000	
Sewage treatment	25,000	
Water	23,000	883,000
Services:		
Cleaning	303,000	
Protection	297,000	
Engineers and electrician	103,000	
Snow removal	44,000	
Landscaping	42,000	789,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing. parking areas and general	86,000	
Structural and exterior	10,000	96,000
Insurance:		
Property	21,000	
Liability	15,000	36,000
Promotional Expenses:		
Merchants Association	31,000	
Advertising and special promotions	42,000	73,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		150,000
		$3,749,000

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED OPERATING EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center, including land for Mall II and III	$2,098,000	
Parcel B N.W. Corner	226,000	$2,324,000
Utilities		1,028,000
Services:		814,000
Repairs, Maintenance & Supplies		117,000
Insurance		43,000
Promotional Expenses		91,000
General & Administrative Expenses		164,000
Management Fee		75,000
Leasing Commissions		150,000
		$4,806,000

E 93

Trial Exhibit 15 - Lease dated May 4, 1973 between Staten Island Mall and Magnaleasing, Inc.

Lease

STATEN ISLAND MALL

Staten Island, New York

LANDLORD: STATEN ISLAND MALL

TENANT: MAGNALEASING, INC. (MAGNAVOX)

E 94

Trial Exhibit 15

TABLE OF CONTENTS

LEASE

Section		Page
	Article I. Fundamental Lease Provisions and Exhibits	
1.1	Fundamental Lease Provisions	1
1.2	Effect of Reference to a Fundamental Lease Provision	2
1.3	Exhibits	2
1.4	Definitions	2
	Article II. Demised Premises and Term	
2.1	Demised Premises	2
2.2	Term	3
2.3	Statement	3
	Article III. Construction	
3.1	Landlord's Work	3
3.2	Tenant's Work	3
3.3	Time for Commencement of Tenant's Work	4
3.4	Security for Tenant's Work	4
3.5	Default in Submitting Plans or Performing Tenant's Work	5
3.6	Obligations of Tenant Before Commencement Date	5
3.7	Waiver	6
3.8	Landlord's Contribution for Tenant's Work	6
3.9	Ownership of Improvements	6

E 95

Trial Exhibit 15

Article IV. Rent

4.1 Payment 6

4.2 Fixed Minimum Rent 7

4.3 Percentage Rent 7

4.4 Definition of Lease Year 9

4.5 Tax Rent 9

4.6 Interest 11

4.7 Fixed Minimum Rent and Additional Rent for a Partial Month 11

Article V. Common Areas

5.1 Common Areas 11

5.2 Use of Common Areas 12

5.3 Common Area Charges 13

Article VI. Utility Services

6.1 Sewer, Water, Gas and Electricity 14

6.2 Payment 14

Section		Page
6.3	Furnishing of Utility Service	15
6.4	Adjustments	15

ARTICLE VII. LANDLORD'S ADDITIONAL COVENANTS

7.1	Repairs by Landlord	17
7.2	Quiet Enjoyment	17
7.3	Landlord's Liability	17

ARTICLE VIII. TENANT'S ADDITIONAL COVENANTS

8.1	Affirmative Covenants	18
	A. Performance of Obligations and Payment of Fixed Minimum Rent and Additional Rent	18
	B. Use	18
	C. Continuous Operation	18
	D. Storage and Deliveries	19
	E. Repairs	19
	F. Repairs, etc. Required by Governmental Regulations	19
	G. Performance of Work	19
	H. Indemnity	19
	I. Insurance	19
	J. Increase in Insurance Premiums	20
	K. Property Loss or Damage	21
	L. Right of Entry	21
	M. Fees and Expenses	21
	N. Mechanics' Liens	22
	O. End of Lease Term	22
	P. Merchants' Association	22

Q. Subordination 24
R. Attornment 25
S. Reference to Shopping Center 25
T. Continuing Liability 25
U. Permits and Licenses 25
V. Signs 25
W. Rules and Regulations 26
X. Fire Safety 26

8.2 Negative Covenants 26
A. Competition 26
B. Alcoholic Beverages 26
C. Use 26
D. Alterations 27
E. Vending Machines 27
F. Assignment, etc. 27
G. Outside Services 27
H. Freight Handling 27
I. Elephant Trains 28
J. Changes in Exterior 28
K. Signs 28

BEST COPY AVAILABLE

Section		Page
	L. Floor Loads	28
	M. Pay Telephones	28
	N. Trading Stamps	28
	ARTICLE IX. DESTRUCTION; CONDEMNATION	
9.1	Fire or Other Casualty	28
9.2	Condemnation	30
	ARTICLE X. DEFAULTS AND REMEDIES	
10.1	Bankruptcy	31
10.2	Default	32
10.3	Remedies of Landlord	33
10.4	Waiver of Trial by Jury; Tenant Not to Counterclaim	35
10.5	Holdover by Tenant	35
10.6	Landlord's Right to Cure Defaults	35
10.7	Effect of Waivers of Default	36
10.8	Security Deposit	36
	ARTICLE XI. MISCELLANEOUS PROVISIONS	
11.1	Notices From One Party to the Other	36
11.2	Brokerage	37
11.3	Control of Tenant	37
11.4	Relationship of the Parties	37

11.5 Estoppel Certificates 37
11.6 Applicable Law and Construction 38
11.7 Cancellation 38
11.8 Short Form Lease 38
11.9 Binding Effect of Lease 38
11.10 Financing 38
11.11 Definitions 39
A. Additional Rent 39
B. Affiliate 39
C. Common Areas 39
D. Common Area Charges 39
E. Covered Mall 39
F. Days for Completion of Tenant's Work 39
G. Demised Premises 39
H. Department Store 39
I. Department Store Parcels 39
J. Fixed Minimum Rent 39
K. Floor Space 39
L. Gross Sales 40
M. Guarantor 40

E 100

Trial Exhibit 15

Section		Page
	N. Landlord	40
	O. Landlord's Work	40
	P. Lease Term	40
	Q. Lease Year	40
	R. Percentage Rent	40
	S. Percentage Rent Periods	40
	T. Percentage Rent Rate	40
	U. Permitted Uses	40
	V. Person	40
	W. Shopping Center	40
	X. Taxes	41
	Y. Tax Rent	41
	Z. Tenant	41
	AA. Tenant's Proportionate Share of Common Area Charges	41
	BB. Tenant's Trade Name	41
	CC. Tenant's Work	41
	DD. Utility Charge	41
11.12	Construction on Adjacent Premises	41
11.13	Effect of Unavoidable Delays	41
11.14	No Oral Changes	42
11.15	No Representations by Landlord	42
	Signatures	42
	Acknowledgments	43
	Guaranty	44
	Acknowledgments	46
	Exhibit A. Site Plan	47
	Exhibit B. Demised Premises within the Building	48
	Exhibit C. Description of and Design Criteria for Landlord's Work and Tenant's Work	51
	Exhibit D. Utilities	70

E 101

Trial Exhibit 15

STATEN ISLAND MALL

Staten Island, New York

LEASE

ARTICLE I. FUNDAMENTAL LEASE PROVISIONS AND EXHIBITS

SECTION 1.1. *Fundamental Lease Provisions.*

DATE: May 4, 1973

LANDLORD: Staten Island Mall, a joint venture comprised of BLACKFRIARS REALTY CORP., a New York Corporation, and TOTTENHAM REALTY CORP., a New York Corporation.

ADDRESS OF LANDLORD: 58 Park Place, Newark, New Jersey 07102.

TENANT: Magnaleasing, Inc.

ADDRESS OF TENANT: 1700 Magnavox Way
Fort Wayne, Indiana

TENANT'S TRADE NAME: Magnavox Home Entertainment Center

DEMISED PREMISES: As shown on the space plan attached hereto as Exhibit B (the building in which the Demised Premises are located being designated "D" on Exhibit A and hereinafter referred to as the "Building").

LEASE TERM: Fifteen (15) Lease Years (plus a Partial Lease Year, if any, prior to the First Lease Year).

FIXED MINIMUM RENT: $ 23,452.00 per annum, computed at the rate of $ 6.50 per square foot of Floor Space of the Demised Premises and subject to final adjustment and determination pursuant to Section 2.3.

E 102

Trial Exhibit 15

ESCALATION:

(a) Fixed Minimum Rent to be increased by 10% upon the opening of the Third Department Store;

(b) Fixed Minimum Rent to be increased by 10% upon the opening of the Fourth Department Store;

~~(c) Fixed Minimum Rent to be increased by $1.00 per annum per square foot~~ of Floor Space of the Demised Premises on the first day ~~of the~~ sixteenth Lease Year; and

(d) Fixed Minimum Rent to ~~be increased~~ by $1.00 per annum per square foot of Floor ~~Space of the~~ Demised Premises on the first day of the twenty-first ~~Lease Year.~~

PERCENTAGE RENT RATE: Four percent (4%)

PERCENTAGE RENT PERIODS: ~~Quarter~~ annual (~~Commencing~~ February 1, ~~May 1, August 1 and November 1~~).

PERMITTED USES: The Demised Premises shall be used solely for the retail sale of Magnavox televisions, stereo components and other products customarily found in a substantial number of Magnavox Home Entertainment Centers on the Date of the Lease, and reasonably related products, and incidental thereto, the service and storage of such products.

LANDLORD'S CONTRIBUTION FOR TENANT'S WORK: See Rider

DAYS FOR COMPLETION OF TENANT'S WORK: 75 days from the date for the commencement of Tenant's Work pursuant to Section 3.3.

INITIAL HERE

RETAIL RESTRICTION LIMIT: The area lying within a circle having a radius of ~~four~~ two (2) ~~(4)~~ miles from the intersection of Richmond Avenue and Richmond Hill Road.

SECURITY DEPOSIT: None

SECTION 1.2. *Effect of Reference to a Fundamental Lease Provision.* Each reference in this Lease to any of the Fundamental Lease Provisions contained in Section 1.1 shall be construed to incorporate into such reference all of the terms provided under each such Fundamental Lease Provision.

SECTION 1.3. *Exhibits.* The exhibits listed in this Section and attached to this Lease are hereby incorporated in and made a part of this Lease:

EXHIBIT A. Site Plan.

EXHIBIT B. Demised Premises within the Building.

EXHIBIT C. Description of and Design Criteria for Landlord's Work and Tenant's Work.

EXHIBIT D. Utilities.

SECTION 1.4. *Definitions.* Unless the context otherwise clearly indicates a contrary intent or unless otherwise specifically provided herein, all terms used in this Lease which are defined in Section 11.11 shall be deemed to have the respective meanings set forth therein.

Trial Exhibit 15

Article II. Demised Premises and Term

Section 2.1. *Demised Premises.* Landlord hereby leases to Tenant and Tenant hereby hires and takes from Landlord, the premises ("Demised Premises"), located in the Shopping Center shown on Exhibit A, which premises extends to the exterior faces of all exterior walls (including, without limitation, walls between the Demised Premises and the Covered Mall or other Common Areas) or, where there is no wall, to the line shown on Exhibit B, as such line is finally determined, and to the center line of those walls (or prolongations thereof) separating the Demised Premises from other premises in the Shopping Center;

Subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease;

Together with the appurtenances specifically granted in this Lease, including the use in common with others of the Common Areas as hereinafter more fully provided, but reserving and excepting to Landlord (i) the use of (a) the exterior faces of the exterior walls, (b) the upper surface ~~of the roof~~ and (c) the lower surface of the floor slab of the Upper Mall and (ii) the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires which now or hereafter may serve other parts of the Shopping Center and which now or hereafter may pass through the Demised Premises, so long as such pipes, ducts, conduits and wires are not placed in locations which will materially adversely interfere with Tenant's use of the Demised Premises.

Exhibit A sets forth the general layout of the Shopping Center but shall not be deemed to be a warranty, representation or agreement on the part of Landlord that the Shopping Center will be or will continue to be as indicated on Exhibit A. Landlord hereby reserves the right at any time and from time to time to make alterations or additions to and to build additional stories on any building in the Shopping Center and to build other buildings or improvements in the Shopping Center and to make alterations thereof or additions thereto and to build additional stories on any such buildings and to construct deck or elevated parking facilities. 1

1 See Rider

INITIAL HERE

SECTION 2.2. *Term.* TO HAVE AND TO HOLD the Demised Premises unto Tenant for a term which shall commence on a date ("Commencement Date") which shall be the earlier of (i) the day following the last day allowed to Tenant for the completion of Tenant's Work as set forth in Section 3.3 or (ii) the day Tenant opens for business in the Demised Premises, and which shall end at midnight on January 31st of the last Lease Year (as defined in Section 4.4) of the Lease Term (as defined in Section 1.1) unless sooner terminated as hereinafter provided ("Expiration Date"), except that if Landlord shall not permit Tenant to open for business before the Covered Mall is open to the public, the Lease Term shall not commence until the day on which the Covered Mall is so opened. 1

SECTION 2.3. *Statement.* When the Commencement Date and Expiration Date have been determined, as provided in Section 2.2, Landlord and Tenant shall execute and deliver a written statement, not in recordable form, specifying the Commencement Date, Expiration Date, Floor Space in the Demised Premises as certified to by Landlord's architect or engineer, and the exact amount of the Fixed Minimum Rent based upon such certification. If there shall have been any change in Exhibit A or Exhibit B, the same shall be modified to reflect such change or changes. Such statement, when so executed and delivered, together with the revised Exhibits, if any, will be deemed to be incorporated in and become a part of this Lease.

ARTICLE III. CONSTRUCTION

SECTION 3.1. *Landlord's Work.* Landlord shall, at its sole cost and expense, perform such work set forth in Section II of Exhibit C ("Landlord's Work") with respect to the Demised Premises and the Building in such manner as to comply with the requirements of Exhibit C. The ~~proposed~~ location of the Building within the

Shopping Center is shown on Exhibit A and the ~~proposed~~ location of the Demised Premises within the Building is shown on Exhibit B. Notwithstanding the foregoing, the type, shape, height and number of stories of the Building, ~~the location of the Demised Premises on the level and within the Building shown on Exhibit B~~, Landlord's Work and the design criteria therefor in Exhibit C, and the nature and identity of the occupants of the adjoining leased premises shall each be subject to such changes (whether ordinary or extraordinary, foreseen or unforeseen) as Landlord shall, at any time and from time to time, deem to be desirable for the benefit of the Shopping Center; provided, however, that such changes shall not materially adversely affect Tenant ~~and provided further that the resulting Demised Premises~~ shall be substantially equivalent in usefulness for Tenant's ~~purposes~~ as prior to such changes, and provided further ~~that no such~~ changes with respect to the Demised Premises ~~may be made~~ after Tenant has commenced Tenant's Work pur~~suant to Section 3.3~~. No such changes, or any of them, shall invalidate or affect this Lease, and Landlord and Tenant shall, on request by either, modify Exhibits A, B and/or C, to such extent as Welton Becket and Associates or other architect selected by Landlord certifies to be proper to accord with the changes referred to in the preceding portions of this Section. It shall be conclusively presumed that the Demised Premises were in satisfactory condition in all respects when Tenant opens for business in the Demised Premises except for items of Landlord's Work which are not completed or do not conform to Exhibit C and as to which Tenant shall have given notice to Landlord within ~~10~~ days after Tenant opens for business. Any disagreement which may arise between Landlord and Tenant with respect to either Landlord's Work or Tenant's Work as defined in Section 3.2 shall be resolved by the decision of Landlord's architect, the cost of whose services in respect of such disagreement shall be borne ~~equally~~ by Landlord ~~and Tenant~~. 60

SECTION 3.2. *Tenant's Work.* All work within the Demised Premises required for the occupancy of the Demised Premises and Tenant's opening for business, other than that specifically undertaken to be performed by Landlord, as specified in Exhibit

1 See Rider

INITIAL HERE

C, shall be completed by Tenant ("Tenant's Work") at Tenant's sole cost and expense and in accordance with the plans and specifications hereinafter referred to in this Section prepared by Tenant's architect in conformity with the description of Tenant's Work and the design criteria therefor set forth in Exhibit C. Tenant shall prepare and submit to Landlord for approval within 30 days from the date of this Lease, six sets of preliminary plans and specifications ("Preliminary Plans") covering Tenant's Work prepared in conformity with the applicable provisions of Exhibit C. If Landlord shall notify Tenant of any objections to the Preliminary Plans, Tenant shall make necessary revisions and submit the revised Preliminary Plans within 30 days after such notice. Landlord's approval will be evidenced by endorsement to that effect on one set of Preliminary Plans and the return of such signed set to Tenant. Within 45 days after the approval of the Preliminary Plans, Tenant shall deliver to Landlord six sets of working plans and specifications ("Working Plans") prepared in conformity with the approved Preliminary Plans. Landlord shall notify Tenant of the manner, if any, in which the Working Plans fail to conform with the Preliminary Plans and/or with the applicable provisions of Exhibit C. If Landlord shall notify Tenant of any objections to the Working Plans, Tenant shall make necessary revisions and submit the revised Working Plans within 30 days after such notice. Landlord's approval will be evidenced by endorsement to that effect on one set of the Working Plans and the return of such signed set to Tenant. (The Preliminary Plans and Working Plans shall be hereinafter collectively referred to as "Plans.")

SECTION 3.3. *Time for Commencement of Tenant's Work.* Tenant will commence and perform Tenant's Work in a manner which will not interfere with completion of Landlord's Work and will perform and complete Tenant's Work in compliance with (i) the terms of this Lease, (ii) such reasonable rules and regulations as Landlord and its architect and contractor, or contractors, may make and (iii) all applicable laws, orders, regulations and requirements of all governmental authorities and board of fire underwriters having jurisdiction thereof. Tenant agrees

that it will not at any time prior to or during the Lease Term, either directly or indirectly, employ or permit the employment of any contractor, mechanic or laborer, or use or permit the use of any materials in the Demised Premises, in connection with any Tenant's Work or otherwise, if the use of such contractor, mechanic or laborer or such materials would, in Landlord's opinion, create any difficulty with other contractors, mechanics or laborers engaged by Tenant or Landlord or others, or would in any way disturb the usual operations of the Shopping Center or the construction, maintenance or operation of the Shopping Center or any part thereof. If, in Landlord's opinion, any such employment or use would cause any interference or conflict, or in the event of any such interference or conflict, Tenant, upon demand of Landlord, shall cause all such contractors, mechanics or laborers, or all such materials to leave the Shopping Center immediately. Tenant's Work shall be performed by a contractor employed by Tenant and approved by Landlord. Landlord, in exercising its right to approve or disapprove of a contractor, shall not be deemed to
1 be acting as Tenant's agent in the selection of Tenant's contractor. Tenant's Work will be commenced ~~within 30 days after the last to occur of the following~~:
2 ~~(i)~~ Landlord's approval of the Working Plans ~~and (ii) Landlord's notice to Tenant~~
3 ~~that the Building will, within 30 days after said notice, be~~ completed to an extent where Tenant's Work can, in accordance with good construction practice, be commenced. Tenant's Work shall be performed in accordance with the approved Plans and Exhibit C and shall be completed within the time limits specified in Section 1.1, subject to Unavoidable Delays, and Tenant shall open the Demised Premises for its business upon such completion, except that, without Landlord's consent, Tenant shall not so open before Landlord opens the Covered Mall to the public. 4

SECTION 3.4. *Security for Tenant's Work.* Tenant shall, before entering on the Demised Premises for the performance of Tenant's Work, ~~either (i) furnish to~~
5 ~~Landlord a bond in an amount satisfactory to Landlord written by a surety company~~

1 Days for Completion of
2 on the date following
3 provided that on such date the Building has been
4 See Rider
5 deliver to Landlord, unconditional waivers of mechanic's lien executed by each of Tenant's contractors, subcontractors, mechanics and materialmen.

INITIAL HERE

~~acceptable to Landlord guaranteeing the completion of and payment for Tenant's~~ Work, including, without limitation, reasonable architect's and attorneys' fees, free of mechanics' liens or (ii) deposit with Landlord in escrow, at Tenant's option, cash or an unconditional and irrevocable letter of credit issued by a bank satisfactory to Landlord in the sum, estimated by Landlord, required to complete Tenant's Work, including, without limitation, reasonable architect's and attorneys' fees. If a deposit shall be made in accordance with (ii) above, upon (a) the satisfactory completion of all Tenant's Work, (b) the submission of proof, satisfactory to Landlord, that all bills in connection therewith have been paid, and (c) the issuance of a permanent Certificate of Occupancy for the Demised Premises, Landlord shall release such letter of credit or cash from escrow. Landlord, in its sole discretion, shall be entitled, from time to time, to have recourse to any bond, letter of credit or escrow deposit provided by Tenant hereunder to pay bills for Tenant's Work or any portion thereof.

SECTION 3.5. *Default in Submitting Plans or Performing Tenant's Work.* If Tenant fails to make timely submission to Landlord of any Plans or delays in submitting or supplying information, or in giving authorizations or in performing or completing Tenant's Work, or in any manner delays or interferes with the performance of Landlord's Work, Landlord, in addition to any other right or remedy it may have at law or in equity or under this Lease, may pursue any one or more of the following remedies:

(i) If Tenant defaults in submitting Plans, Landlord may give Tenant 10 days' written notice of such default and at the expiration of the 10 day period this Lease shall be cancelled and terminated without prejudice to any other rights of Landlord hereunder, unless Tenant shall have cured such default within the 10 day period. 1

(ii) Landlord may, after 10 days' prior written notice, proceed with the completion of the Plans or Tenant's Work, as the case may be, at Tenant's cost and expense, including, but not limited to, architect's ~~and attorneys'~~ fees, and reasonable such performance by Landlord shall have the same effect hereunder as if the Plans and Tenant's Work had been done by Tenant.

(iii) Landlord may give written notice to Tenant (notwithstanding that such a notice is not otherwise required hereunder) that the Commencement Date will be deemed to have occurred on the date specified in such notice which date would have been the Commencement Date if Tenant had (a) made timely submission of the Plans and (b) completed Tenant's Work without delay and on and after the date so specified in said notice Tenant shall pay to Landlord the Fixed Minimum Rent, Additional Rent and any other charges which are payable hereunder by Tenant during the Lease Term.

(iv) Landlord may require Tenant to pay to Landlord, as Additional Rent, the cost to Landlord of completing the Demised Premises in accordance with the terms of this Lease.

~~In exercising any of the foregoing remedies, Landlord shall be entitled to retain~~ and have recourse to any bond, letter of credit ~~or escrow~~ deposit provided by Tenant ~~under Section 3.4.~~

SECTION 3.6. *Obligations of Tenant Before Commencement Date.* Tenant shall observe and perform all of its obligations under this Lease and Exhibit C (including, without limitation, its obligation to pay charges for temporary water, heating, cooling and lighting pursuant to Exhibit C, but excepting its obligations to pay Fixed Minimum Rent or Additional Rent) from the date upon which the Demised Premises are made available to Tenant for Tenant's Work (or from the date when Tenant commences Tenant's Work in the Demised Premises, if earlier) until the Commence-

1 or shall have commenced to cure such default within such ten (10) day period, and thereafter shall diligently pursue such cure to completion.

INITIAL HERE

ment Date in the same manner as though the Commencement Date had occurred when the Demised Premises were so made available to Tenant or when Tenant commenced performing Tenant's Work, if earlier.

SECTION 3.7. *Waiver.* The parties hereto agree that Article II and Article III constitute express provisions as to the time when Landlord shall deliver possession of the Demised Premises to Tenant, and Tenant hereby waives any right to rescind this Lease which Tenant might otherwise have pursuant to Section 223-a of the Real Property Law of the State of New York or pursuant to any other law of like import now or hereafter in force and further waives the right to recover any damages which may result from Landlord's failure to deliver possession of the Demised Premises or any portion thereof on the Commencement Date.

SECTION 3.8. *Landlord's Contribution for Tenant's Work.* When Tenant shall have (i) completed Tenant's Work, (ii) furnished evidence, satisfactory to Landlord, that all of Tenant's Work has been completed and paid for in full (and Tenant's Work has been accepted by Landlord), that any and all liens therefor have been waived or, in the event filed, discharged of record (by payment, bond, order of a court of competent jurisdiction or otherwise) and that no security interests relating thereto are outstanding, (iii) reimbursed Landlord for the cost of any Tenant's Work done for Tenant by Landlord (or, alternatively, when Landlord and Tenant have agreed in writing upon the cost of such Tenant's Work done by Landlord to be offset against Landlord's Contribution for Tenant's Work), (iv) furnished to Landlord all certifications and approvals with respect to Tenant's Work that may be required from any governmental authority and any board of fire underwriters or similar body for the use and occupancy of the Demised Premises, (v) furnished to Landlord the insurance required by Section 8.1I, (vi) opened its store for business and (vii) executed and delivered to Landlord an estoppel certificate with respect to this Lease in form and substance as set forth in Section 11.5, then Landlord shall pay to Tenant the Landlord's Contribution for Tenant's Work, as set forth in Section 1.1, less any offset pursuant to (iii) above.

SECTION 3.9. *Ownership of Improvements.* All installations, alterations, additions or improvements upon the Demised Premises, made by either party, including, but not limited to, all pipes, ducts, conduits, wiring, panelling, decorations, partitions, railings, mezzanine floors, galleries and the like, shall, ~~unless Landlord otherwise elects (which election shall be made by giving a notice pursuant to the provisions of Section 11.1 not less than three days prior to the Expiration Date)~~ become the property of Landlord and shall remain upon and be surrendered with the Demised Premises as a part thereof on the Expiration Date. Movable office furniture and trade fixtures, which are installed by Tenant at its expense, shall remain its property and may be removed at any time during the Lease Term, provided Tenant promptly repairs any damage caused by such removal. [1]

ARTICLE IV. RENT

SECTION 4.1. *Payment.* A. Fixed Minimum Rent and Additional Rent (as defined in Subsection B of this Section) payable to Landlord under the provisions of this Lease shall be paid to "Feist & Feist, as managing agent," or as Landlord may otherwise designate, in lawful money of the United States which shall be legal tender for payment of all debts and dues, public and private, at the time of payment, at the Address of Landlord or at such other place as Landlord may designate in writing, without any abatement, counterclaim, set-off or deduction whatsoever and without any prior demand therefor.

B. "Additional Rent" shall be deemed to consist of all sums of money which shall become due from and payable by Tenant hereunder (excluding Fixed Minimum Rent and the charges for temporary water, heating, cooling, lighting and rubbish

1 Signs, carpeting and all interior partitions (except interior partitions which surround a toilet enclosure, if any) which are installed by Tenant at its expense, shall remain its property and shall be removed on or prior to the Expiration Date.

INITIAL HERE

removal paid pursuant to Exhibit C), including but not limited to, Percentage Rent, Tax Rent, Common Area Charges, Utility Charge and Merchants' Association dues for default in the payment of which Landlord shall have the same remedies as for a default in the payment of Fixed Minimum Rent.

SECTION 4.2. *Fixed Minimum Rent.*

A. Tenant shall pay the Fixed Minimum Rent set forth in Section 1.1, as adjusted, finally determined and specified in the statement provided for in Section 2.3 and as increased pursuant to the succeeding Subsections of this Section, in equal monthly installments, in advance, on the first day of each calendar month included in the Lease Term. If the Commencement Date shall be any day other than the first day of a calendar month, Fixed Minimum Rent and Additional Rent, if any, for such calendar month shall be pro-rated on a per diem basis, and Tenant shall pay the pro-rata amount on or prior to the Commencement Date.

B. In the event a third department store ("Third Department Store") is constructed in the Shopping Center, then, upon the opening for business of the Third Department Store ("First Opening Date"), the Fixed Minimum Rent shall, commencing as of the first day of the month in which the First Opening Date occurs, be increased by an amount equal to 10% of the Fixed Minimum Rent in effect immediately prior to the First Opening Date. Landlord shall give Tenant 30 days notice reasonably estimating the First Opening Date. When the First Opening Date has been finally determined, Landlord and Tenant shall execute and deliver an amendment to the statement provided for in Section 2.3 specifying the amount of the Fixed Minimum Rent as increased in accordance with this Subsection.

C. In the event a fourth department store ("Fourth Department Store") is constructed in the Shopping Center, then, upon the opening for business of the Fourth Department Store ("Second Opening Date"), the Fixed Minimum Rent shall, commencing as of the first day of the month in which the Second Opening Date

occurs, be increased by an amount equal to 10% of the Fixed Minimum Rent in effect immediately prior to the Second Opening Date. Landlord shall give Tenant 30 days notice reasonably estimating the Second Opening Date. When the Second Opening Date has been finally determined, Landlord and Tenant shall execute and deliver an amendment to the statement provided for in Section 2.3 specifying the amount of the Fixed Minimum Rent as increased in accordance with this Subsection.

~~D. Commencing upon the first day of the sixteenth Lease Year, the Fixed Minimum Rent shall be increased by an amount equal to $1.00 per square foot of Floor Space in the Demised Premises as set forth in the statement provided for in Section 2.3. Within 5 days after the first day of the sixteenth Lease Year, Landlord and Tenant shall execute and deliver an amendment to the statement provided for in Section 2.3 specifying the Fixed Minimum Rent as increased in accordance with this Subsection.~~

~~E. Commencing upon the first day of the twenty-first Lease Year, the Fixed Minimum Rent shall be increased by an amount equal to $1.00 per square foot of Floor Space in the Demised Premises as set forth in the statement provided for in Section 2.3. Within 5 days after the first day of the twenty-first Lease Year, Landlord and Tenant shall execute and deliver an amendment to the statement provided for in Section 2.3 specifying the Fixed Minimum Rent as increased in accordance with this Subsection.~~

SECTION 4.3. *Percentage Rent.* A. Tenant shall pay percentage rent ("Percentage Rent") for each Lease Year or Partial Lease Year included in the Lease Term, payable as hereinafter provided, in an amount, if any, by which Tenant's Gross Sales (as defined in the next succeeding Subsection) transacted during any Lease Year or Partial Lease Year, multiplied by the Percentage Rent Rate, shall exceed the Fixed Minimum Rent payable for such Lease Year or Partial Lease Year.

INITIAL HERE

Trial Exhibit 15

B. The term "Gross Sales" as used herein is defined to mean the total amount of the actual prices charged, whether for cash or on credit or partly for cash and partly on credit, for all services and for all sales or leases of merchandise, food and beverages, gift or merchandise certificates, and all other receipts of business conducted at, in, on, about or from the Demised Premises, including, but not limited to, all mail or telephone orders received or filled at, in, on, about or from the Demised Premises, and including all deposits not refunded to purchasers, all orders taken at, in, on, about or from the Demised Premises whether or not said orders are filled elsewhere, total receipts of sales through any vending machine or other coin or token operated device and total sales by any sublessee, concessionaire or licensee or otherwise at, in, on, about or from the Demised Premises, and sales and receipts occurring or arising as a result of solicitation conducted away from the Demised Premises by personnel operating from, or reporting to, or under the supervision of any employee of Tenant located at the Demised Premises, or conducted within the Retail Restriction Limit and all moneys or other things of value received by Tenant from its operations which are neither included in nor excluded from Gross Sales by the other provisions of this Section. Gross Sales shall not, however, include (i) any sums collected and paid out for any retail sales tax or retail excise tax imposed by any duly constituted governmental authority and separately stated, (ii) any amounts realized upon any exchange of goods or merchandise between the stores of Tenant provided such exchange of goods or merchandise is made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which has theretofore been made at, in, on, about or from the Demised Premises or for the purpose of depriving Landlord of the benefits of a sale which otherwise would be made at, in, on, about or from the Demised Premises, (iii) the amount of returns to shippers or manufacturers, (iv) the amount of any cash or credit refund, limited to the sales price, made upon any sale at, in, on, about or from the Demised Premises where the merchandise sold, or some part thereof, is thereafter returned by the purchaser and accepted by Tenant and (v) the amount received from sales of fixtures which are not a part of Tenant's stock in trade. Each sale upon installment, credit or layaway shall be treated as a sale for the full price in the month during which such sale shall be

made, irrespective of the time when Tenant shall receive payment from its customer, and no deduction shall be allowed for uncollectible credit accounts. Each lease of merchandise shall be treated as a sale in the month in which made for a price equal to the total rent payable during the term of the lease. Notwithstanding anything contained in this Section, the operation of any vending machine or other coin or token operated device shall be subject to the prior written consent of Landlord, as provided in Section 8.2E.

C. Tenant shall utilize, and cause to be utilized, cash registers equipped with sealed continuous totals or such other devices for recording sales as Landlord shall approve to record all cash sales. Tenant shall keep on the Demised Premises or at some other place in the Metropolitan New York area, for at least 36 months after the expiration of each Lease Year, full, true, and accurate books of account and records conforming to generally accepted accounting principles showing all of the Gross Sales for such Lease Year, including all tax reports, dated cash register tapes, sales checks, sales books, bank deposit records and other supporting data. Within 15 days after the end of each Percentage Rent Period (as defined in Section 1.1), or portion thereof, included in the Lease Term, Tenant shall, in accordance with Section 4.3D, pay to Landlord the amount of Percentage Rent due for that Percentage Rent Period and shall furnish to Landlord a statement signed and verified by Tenant (or by an authorized officer if Tenant be a corporation) of the Gross Sales transacted during such Percentage Rent Period or portion thereof and enumerating all exclusions from Gross Sales permitted by Section 4.3B; and on or before April 1 in each Lease Year or Partial Lease Year and within 90 days after the end of the Lease Term, Tenant shall furnish to Landlord a statement ("Annual Statement"), certified to Landlord by an independent Certified Public Accountant ~~approved by Landlord~~, of Gross Sales transacted during the preceding Lease Year or

INITIAL HERE

Partial Lease Year and enumerating all exclusions from Gross Sales permitted by Section 4.3B. The certification by said accountant shall expressly state that the Gross Sales and the exclusions from Gross Sales shown on the Annual Statement conform to and are computed in compliance with Section 4.3B. Once in every 12 month period, upon 7 days' written notice, Landlord, by its accountants or representatives shall have the right to audit all statements of Gross Sales and exclusions from Gross Sales and in connection with such audits to examine all of the Tenant's records relating to Gross Sales and exclusions from Gross Sales (including Tenant's New York City and New York State sales tax returns and all supporting data and any other records from which Gross Sales may be tested or determined), and Tenant shall make all such records readily available for such examination. If any such audit discloses that the actual Gross Sales transacted by Tenant exceed those reported, Tenant shall forthwith pay to Landlord any additional Percentage Rent as may be so shown to be payable and, if the actual Gross Sales so disclosed shall exceed by more than 2% the Gross Sales reported by Tenant, Tenant shall also then pay the cost of such audit and examination. Any information obtained by Landlord pursuant to the provisions of this Section shall be treated as confidential, except in the event such information is subpoenaed or in connection with any litigation or arbitration proceedings between the parties and, except further, that Landlord may disclose such information to prospective buyers, to prospective or existing lenders, and in any registration statement filed with the Securities and Exchange Commission or other similar body.

D. On or before the 15th day after the expiration of each Percentage Rent Period, and on or before the 15th day after the Expiration Date, Tenant shall pay to Landlord, as Percentage Rent, a sum equal to the amount, if any, by which the cumulative Gross Sales transacted during the then current Lease Year to and including the expiration date of such Percentage Rent Period, multiplied by the Percentage Rent Rate, exceeds the aggregate of the Fixed Minimum Rent and Percentage Rent theretofore paid for the then current Lease Year. Upon furnishing the Annual Statement to Landlord, Tenant shall pay the balance of Percentage Rent due, if any. If, at the end of any Lease Year, the total amount of Fixed Minimum Rent and Percentage Rent paid by Tenant exceeds the total amount of Fixed Minimum Rent and Percentage Rent required to be paid by Tenant during such Lease Year, Tenant shall receive a credit equal to such excess which shall be deducted by Tenant from the payments of Fixed Minimum Rent and Percentage Rent next due.

SECTION 4.4. *Definition of Lease Year.* The term "Lease Year" is defined to mean a period of 12 consecutive calendar months, the first Lease Year ("First Lease Year") to commence on the first day of February following the Commencement Date and each succeeding Lease Year to commence on the anniversary date of the First Lease Year. Any portion of the Lease Term which is less than a Lease Year as hereinbefore defined shall be deemed a "Partial Lease Year." Any reference in this Lease to a "Lease Year" shall, unless the context clearly indicates otherwise, be deemed to be a reference to a "Partial Lease Year" if the period in question involves less than a period of twelve consecutive calendar months.

SECTION 4.5. *Tax Rent.* A. For the purposes of this Lease the term "Taxes" shall include all real estate taxes, assessments, special or otherwise, water and sewer rents, county taxes, transit taxes and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the Lease Term be levied, assessed, imposed, become due and payable, or arise 1 in connection with the use, occupancy or possession of, or grow due or payable out of, or for, the Shopping Center or any part thereof, or any land, buildings or other improvements therein, excluding, however, any of the foregoing attributable to Common Areas (other than the Covered Mall) or relating to any one parcel included in the Shopping Center which, except for insignificant portions thereof, is

1 and

INITIAL HERE

occupied by only one occupant and which comprises a separate tax lot or lots for the purpose of assessment for real estate taxes. Whether or not Landlord shall take the benefit of the provisions of any statute or ordinance permitting any assessment for public betterments or improvements to be paid over a period of time, Landlord shall, nevertheless, be deemed to have taken such benefit so that the term "Taxes" shall include only the current annual installment of any such assessment and the interest on unpaid installments. As soon as practicable prior to the Commencement Date and as soon as practicable prior to the commencement of each Lease Year, Landlord will submit to Tenant a statement reasonably estimating the Taxes payable during the next succeeding Lease Year ("Tax Statement"). Each Tax Statement shall be conclusive and binding upon Tenant unless within 30 days after receipt of such Tax Statement Tenant shall notify Landlord that it disputes the correctness of the Tax Statement, specifying the respects in which the Tax Statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall pay Tax Rent in accordance with the applicable Tax Statement, and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, the amount of Tenant's overpayment of Tax Rent resulting from compliance with the Tax Statement will be credited against Tenant's next monthly payments of Tax Rent.[1]

B. On the first day of each month during the Lease Term Tenant shall pay to Landlord, as Additional Rent, in advance, the amount determined by (i) multiplying 1/12 of all Taxes shown on the last rendered Tax Statement by a fraction, the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the Floor Space of all leased or occupied space in the Shopping Center, excluding Floor Space in any building which has been excluded pursuant to Section 4.5A or 4.5C, (the Floor Space for purposes of the calculation of the denominator to be determined as of the first day of the month in question), and (ii) subtracting therefrom an amount equal to 1/12 of 25¢ per square foot of Floor Space of the Demised Premises. The amount paid by Tenant pursuant to this sentence is called "Tax Rent." Within 60 days after each Lease Year, Landlord shall furnish Tenant with a comparative statement of Tax Rent paid by Tenant for the preceding Lease Year based on the Tax Statement and the amount of Tax Rent

Tenant should have paid based on the Taxes actually paid by Landlord during the preceding Lease Year. Any deficiency in Tax Rent will be due and payable by
30 Tenant within ~~10~~ days after receipt of such comparative statement and any overage in Tax Rent will be credited by Landlord against the next succeeding payments of Tax Rent due from Tenant. If any Tax shall be levied, assessed or imposed for any fiscal period which does not contain 12 months, then, in making the computation of Tax Rent for each month in such fiscal period, there shall be included in the computation, in lieu of 1/12 of such Tax, that fraction thereof arrived at by dividing such Tax by the number of months in such fiscal period.

C. Landlord, at its option, may exclude from Taxes all real estate taxes and other impositions of the type described in Subsection A of this Section levied, imposed or otherwise attributable to (a) a parcel or parcels of land and the buildings or improvements thereon designated on Exhibit A as "Future Development" or "Convenience Center," (b) a parcel or parcels of land and any free-standing building which shall be constructed thereon, and (c) a parcel or parcels of land and the buildings and improvements thereon, provided such buildings and improvements are used for other than retail purposes. In the event Landlord elects to exclude from Taxes the real estate taxes and other impositions relating to any of such parcels, the Floor Space in any building or buildings on such parcels shall be excluded from the Floor Space of all leased or occupied space in the Shopping Center for purposes of calculating the Tax Rent payable by Tenant pursuant to Subsection B of this Section.

D. No inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax or capital levy that is or may be imposed upon Landlord shall be deemed to be included in Taxes; provided, however, that, if at any time during

INITIAL HERE

1 ,together with Tenant's reasonable costs (excluding attorneys' fees) in connection with the termination of such dispute.

the Lease Term the methods of taxation prevailing at the date hereof shall be altered so that in lieu of or as an addition to or as a substitute for the whole or any part of the Taxes now levied, assessed or imposed on all or any part of the Shopping Center, there shall be levied, assessed or imposed (i) a tax, assessment, levy, imposition or charge based on the rents received therefrom whether or not wholly or partially as a capital levy or otherwise, or (ii) a license fee measured by the rents received by Landlord from the Shopping Center or any portion thereof, or (iii) a tax or license fee imposed upon Landlord which is otherwise measured by or based in whole or in part upon the Shopping Center or any portion thereof, or (iv) any other tax, levy, imposition, charge or license fee however described or imposed, then the same shall be included in the computation of Tax Rent hereunder.

E. If, after Tenant shall have made a payment of Tax Rent, Landlord shall receive a refund of any portion of the Taxes on which such payment shall have been based, Landlord's comparative statement next following such refund shall include an adjustment reflecting such refund less all costs and expenses (including reasonable attorneys' and appraisers' fees) incurred by Landlord in connection with securing such refund. Tenant shall not institute any proceedings with respect to the assessed valuation of the Shopping Center or any part thereof or the Taxes thereon. If, at least 30 days prior to the last day for the institution of such proceedings, (a) tenants ("Tenants' Group") occupying 75% of the Floor Space of the Shopping Center (excluding the Department Store Parcels) request Landlord to institute such proceedings and (b) the Tenants' Group deposits with Landlord a sum equal to Landlord's estimate of the cost of instituting and maintaining such proceedings, then Landlord, at the expense of the Tenants' Group, shall file with the Tax Commission or any successor to its functions an application for reduction and correction of the tax assessment for such tax year or fiscal period. In no event shall Landlord be obligated to commence court proceedings to review such assessment unless at least 30 days prior to the last day for the institution of court proceedings to review such assessment the Tenants' Group (a) requests Landlord to institute such court proceedings at the expense of the Tenants' Group and (b) deposits with Landlord a sum of money equal to Landlord's estimate of the cost of commencing and maintaining such court proceedings. Landlord, in its sole judgment, may settle any such administrative or court proceeding.

F. Tenant at all times shall be responsible for and shall pay, before delinquency, all municipal, county, state or federal taxes levied, assessed or unpaid on Tenant's leasehold interest, any investment of Tenant in the Demised Premises, any personal property of any kind owned, installed or used by Tenant or Tenant's right to occupy the Demised Premises.

SECTION 4.6. *Interest.* Interest ("Interest") shall accrue at the rate of 10% per annum, or the maximum rate of interest permitted by law, whichever is less, from and after the due date of any payment of Fixed Minimum Rent or Additional Rent. 2

SECTION 4.7. *Fixed Minimum Rent and Additional Rent for a Partial Month.* For any portion of a calendar month included in the Lease Term, Tenant shall pay 1/30 of the monthly installment of Fixed Minimum Rent or Additional Rent for each day of such month included within the Lease Term payable in advance on the first day of such portion of the calendar month, except that Percentage Rent for such portion shall be computed and paid as provided in Section 4.3.

ARTICLE V. COMMON AREAS

SECTION 5.1. *Common Areas.* Landlord shall make available within the Shopping Center such areas and facilities ("Common Areas"), including, but not limited to, the parking facilities, driveways, exterior and interior ramps, truckways, delivery and loading facilities, truck-loading areas, access and perimeter roads, walkways, the Covered Mall and other enclosed courts (including, but not limited to, elevators,

1 reasonable
2 ; provided, however, that no interest shall accrue in respect of any default which is cured by Tenant within the period of time allowed for curing such default set forth in Section 10.2A.

INITIAL HERE

escalators, ramps, corridors, stairs and balconies therein), malls, elevators and stairways between receiving areas and common corridors, corridors required for access to any part of the Common Areas or by fire codes or governmental regulations or requirements for public protection or safety, sewage treatment facilities, underground storm and sanitary sewers, common underground utility lines, landscaped and planted areas, other areas not developed or landscaped, directory signs and equipment, auditoriums, public rest rooms, lockers and locker rooms, wash rooms, comfort rooms, drinking fountains and other like public facilities, bus stands, taxi stands and the like and areas used by Landlord for the operation, maintenance and management of the Shopping Center, as Landlord shall deem appropriate. Landlord shall operate, manage, equip, light, repair, replace and maintain the Common Areas for their intended purposes and maintain order and security therein, all in such manner as Landlord shall in its sole discretion determine. Tenant agrees that Landlord may, at any time and from time to time, increase, reduce or change the number, type, size, location, elevation, nature and use of any of the Common Areas, make installations therein, move and remove the same, erect and lease or sell advertising space and erect buildings anywhere in the Shopping Center. If the Common Areas be changed, altered or diminished, Landlord shall not be subject to any liability to Tenant and Tenant shall not be entitled to any compensation or diminution or abatement of rent, nor shall any such change, alteration or diminution be deemed to be a constructive or actual eviction.

SECTION 5.2. *Use of Common Areas.* Tenant and its concessionaires, officers, employees, agents, customers and invitees shall have the non-exclusive right, in common with Landlord and all others to whom Landlord has granted or may hereafter grant rights, to use the Common Areas, subject to such reasonable rules and regulations as Landlord may from time to time impose, including the designation of specific areas in which vehicles owned or operated by Tenant, its concessionaires, or any of their respective officers, employees and agents must be parked and the prohibition of the parking of any such vehicles in any other part of the Common Areas. Landlord may cause to be towed away any such vehicles which are parked in Common Areas in violation of such rules and regulations, at the expense of Tenant,

and Tenant waives liability of Landlord to Tenant in the event that such towing is done. Tenant further agrees, after notice thereof, to abide by such rules and regulations and to use its best efforts to cause its concessionaires, officers, employees, agents, customers and invitees to abide thereby. Landlord may, at any time and from time to time, close any Common Area to make repairs or changes therein or to effect construction, repairs or changes within the Shopping Center, to prevent the acquisition of public rights in such area, or to discourage non-customer parking, and may do such other acts in and to the Common Areas as in its judgment may be
2 desirable to improve the convenience thereof. Tenant shall upon request promptly furnish to Landlord the license numbers of the vehicles operated by Tenant, its concessionaires and their respective officers, agents and employees. Landlord reserves the right to impose parking charges upon Tenant, its concessionaires and their respective officers, agents and employees (determined on a uniform basis by meters or otherwise). If any vehicle of Tenant, its concessionaires, or of any of their respective officers, agents or employees, is parked in any part of the Shopping Center other than the employee parking area(s) designated by Landlord, Tenant shall pay to Landlord, upon demand, an amount equal to the daily rate therefor so established by Landlord from time to time. The net income derived by Landlord in any Lease Year from any such charges shall be credited against Common Area Charges as defined in Section 5.3. Common Areas shall not be used for solicitations, distribution of handbills or other advertising matter, demonstrations or any other activity that would interfere with the use of the Common Areas or with the conduct of business or the rights of other tenants.

1 Landlord shall operate, manage and maintain the Common Areas in good and clean order, operation, condition and repair and in conformity with good standards as practiced at comparable regional shopping centers such as Colonie Mall, Willowbrook Shopping Center or Smith Haven Mall.

2 ; provided, however, that no such action by Landlord shall materially adversely affect Tenant's business in the Demised Premises or affect Tenant in an arbitrary and discriminatory manner.

INITIAL HERE

Trial Exhibit 15

SECTION 5.3. *Common Area Charges.* A. As used herein:

(i) The term "Common Area Charges" shall mean an amount equal to the sum of (a) the actual cost of operating, managing, equipping, cleaning, lighting, repairing, replacing and otherwise maintaining the Common Areas and maintaining order and security therein, including, but not limited to, all costs of insurance relating thereto, all Taxes allocable thereto (other than those payable by Tenant pursuant to Section 4.5) and all costs of maintaining and operating sewerage treatment facilities and meter equipment rooms, and (b) 15% of the costs referred to in (a) above in respect of administrative overhead, less (c) the amount paid by occupants of any Department Store in respect of any of the above costs.

(ii) The term "Tenant's Proportionate Share of Common Area Charges" shall mean an amount equal to the Common Area Charges multiplied by a fraction the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the Floor Space of all leased or occupied space in the Shopping Center devoted to the purpose of selling goods and/or consumer services to the public at retail excluding the Floor Space located in any Department Store and the Floor Space in any building which has been excluded pursuant to Subsection C of this Section.

B. Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of Common Area Charges in equal monthly installments in advance on the first day of each calendar month. Landlord shall furnish to Tenant, for each Lease Year, a statement of (i) the actual Common Area Charges for the prior Lease Year (or Partial Lease Year), (ii) Tenant's Proportionate Share of Common Area Charges for the prior Lease Year (or Partial Lease Year), (iii) the amount paid by Tenant during the prior Lease Year (or Partial Lease Year) in respect of such Common Area Charges, (iv) either the deficiency or overage in such payments and (v) Landlord's estimate of Tenant's Proportionate Share of Common Area Charges

for the then current Lease Year. Any deficiency in payment by Tenant shown on any statement for the prior Lease Year (or Partial Lease Year) shall be due and payable within thirty (30) days after the receipt of such statement and any overage in payment will be credited against the next succeeding payments of Tenant's Proportionate Share of Common Area Charges. After receipt of a statement, Tenant shall pay to Landlord on the first day of each succeeding calendar month an amount equal to one-twelfth (1/12) of Landlord's estimate of Tenant's Proportionate Share of Common Area Charges as shown on such statement until receipt of a new statement. If a statement is furnished to Tenant after the commencement of a Lease Year, Tenant shall pay to Landlord, within thirty (30) days after the receipt of such statement or Landlord shall credit against the next succeeding payments of Tenant's Proportionate Share of Common Area Charges, an amount equal to the deficiency or overpayment allocable to the part of the Lease Year which shall have elapsed prior to the first day of the calendar month next succeeding the calendar month in which the statement is furnished to Tenant. In no event shall Tenant's Proportionate Share of Common Area Charges be reduced to an amount less than Tenant's Proportionate Share of Common Area Charges reflected in the first statement furnished by Landlord to Tenant. Each statement shall be conclusive and binding upon Tenant unless within thirty (30) days after receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the respect in which the statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall pay Tenant's Proportionate Share of Common Area Charges in accordance with the then current statement and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, the amount of Tenant's overpayment of Tenant's Proportionate Share of Common Area Charges resulting from compliance with Landlord's estimate will be credited against the next succeeding payments of Tenant's Proportionate Share of Common Area Charges. For purposes of the period from the Commencement Date to the date

Landlord furnishes the first statement to Tenant, Landlord's estimate of Tenant's Proportionate Share of Common Area Charges shall be 60¢ per annum per square foot of Floor Space in the Demised Premises.

C. Landlord, at its option, may exclude from Common Area Charges all costs described in Subdivisions (i)(a) and (i)(b) of Subsection A of this Section which are allocable or otherwise attributable to (a) a parcel or parcels of land designated as "Future Development" or "Convenience Center" on Exhibit A, (b) a parcel or parcels of land and any free-standing building which shall be constructed thereon, and (c) a parcel or parcels of land and the buildings and improvements thereon, provided such buildings and improvements are used for other than retail purposes. In the event Landlord elects to exclude from Common Area Charges the costs attributable to any of such parcels, the Floor Space in any building or buildings on such parcels shall be excluded from the Floor Space of all leased or occupied space in the Shopping Center devoted to the purpose of selling goods and/or consumer services to the public at retail for purposes of calculating Tenant's Proportionate Share of Common Area Charges pursuant to Subsection A(ii) of this Section.

Article VI. Utility Services

Section 6.1. *Sewer, Water, Gas and Electricity.* A. As long as Tenant is not in default under any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed, Landlord shall cause the necessary mains, conduits and other facilities to be provided and maintained to supply sewer, water (including fire protection sprinkler), gas and electrical service to the Demised Premises in accordance with, subject to and to the extent set forth in Exhibit C.

B. Tenant shall accept and use the services made available by Landlord to Tenant in accordance with Exhibit C for Tenant's heating and cooling equipment and shall utilize the same in accordance with Exhibit C and in such manner as shall not waste heating or cooling effect.

Trial Exhibit 15

SECTION 6.2. A. *Payment.* Tenant shall promptly pay to Landlord, in accordance with the following schedule ("Schedule"), an annual bulk rate utility charge ("Utility Charge") for sewer, water (including fire protection sprinkler), gas and electric service ("Utilities") furnished or made available to the Demised Premises:

Floor Space of Demised Premises	Rate Per Square Foot of Floor Space Per Year
Up to 999 sq. ft.	$1.25
1,000 to 1,999 sq. ft.	1.22
2,000 to 2,999 sq. ft.	1.22
3,000 to 3,999 sq. ft.	1.22
4,000 to 4,999 sq. ft.	1.22
5,000 to 5,999 sq. ft.	1.22
6,000 to 6,999 sq. ft.	1.22
7,000 to 7,999 sq. ft.	1.21
8,000 to 8,999 sq. ft.	1.21
9,000 to 9,999 sq. ft.	1.20
Above 9,999 sq. ft.	1.17

The above rate is based on a typical store layout having normal use of Utilities and a total connected electrical load, for light and power, of five watts per square foot of Floor Space of the Demised Premises and for 60 hours of operation per week. The above rate includes ordinary maintenance (not including capital replacements) of the heating and cooling system fixtures and equipment. Except as provided in the immediately preceding sentence, Tenant shall be responsible for the maintenance (including capital replacements) of the heating and cooling system fixtures and equipment.

Trial Exhibit 15

B. *Conditions.* The Tenant will use normal precautions to guard against the waste of all Utilities, including, but not limited to, electrical energy and water, by use of time clocks for such things as, but not limited to, night show window lighting and automatic water shut-off valves.

C. *Method of Payment.* During the Lease Term, Tenant shall pay to Landlord, as Additional Rent, in equal monthly installments, in advance, on the first day of each calendar month, the Utility Charge in an amount equal to one-twelfth of the product of (i) the Rate per Square Foot of Floor Space of the Demised Premises as set forth in the Schedule, as adjusted pursuant to Section 6.4, multiplied by (ii) the Floor Space of the Demised Premises.

SECTION 6.3. *Furnishing of Utility Services.* Landlord shall not be liable to Tenant in damages or otherwise if the furnishing of any one or more of the Utilities is interrupted, impaired or terminated because of failures, repairs, installations or improvements nor shall any such interruption, impairment or termination release Tenant from the performance of any of its obligations hereunder. Landlord reserves the right to stop the service of any or all of the Utilities when necessary by reason of accident or emergency, or mechanical breakdown, or requirement of law or any cause beyond Landlord's reasonable control or for repairs, alterations, replacements or improvements, which, in the judgment of Landlord, are desirable or necessary, until the reason for such stoppage shall have been eliminated. 1

SECTION 6.4. *Adjustments.* A. Landlord, at Tenant's expense, shall furnish the Utilities to or for the use of Tenant in the Demised Premises. If either the quantity or character of service is changed by the entity supplying such service to the Demised Premises or is no longer available or suitable for Tenant's requirements, no such change, unavailability or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Fixed Minimum Rent, Additional Rent or Utility Charge or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or Landlord's agents.

Trial Exhibit 15

B. Tenant covenants that at no time shall the use of the Utilities in the Demised Premises exceed the capacity of the existing installations then furnishing the Utilities to the Demised Premises. In order to insure that such capacity is not exceeded and to avert possible adverse effect upon the respective systems, Tenant shall not, without prior consent of Landlord in each instance, make or perform, or permit the making or performing of any alteration in or to any system furnishing or serving the Utilities including, without limitation, any alteration, addition or modification of sewer, water or gas lines, or any alteration to wiring installations or other electrical facilities in or serving the Demised Premises or any additions to the electrical fixtures, machines, equipment, or other appliances in the Demised Premises which utilize electrical energy. Should Landlord grant such consent, all additional equipment, including, without limitation, electrical risers, required therefor shall be provided by Landlord and the cost thereof shall be paid by Tenant within 30 ~~10~~ days after being billed therefor. As a condition to granting such consent, Landlord may require Tenant to agree to an increase in the Utility Charge by an amount which will reflect the value to Tenant of the potential additional service to be furnished by Landlord based upon the estimated additional capacity of such additional equipment. If within 10 days after Landlord shall have granted such consent, Landlord and Tenant shall fail to agree upon the amount of such increase in the Utility Charge, then, in lieu of such agreement, the estimated increase in the value to Tenant of the increased service shall be finally determined by an independent engineer or other recognized authority selected by Landlord and paid for ~~by Tenant~~ [2] who shall certify such determination in writing to Landlord and Tenant. Following any such determination Landlord and Tenant shall enter into a written supplementary agreement, in form satisfactory to Landlord, modifying this Lease by increasing the Utility Charge for the remainder of the Lease Term (subject to further

1 Nothing herein shall be deemed to exempt Landlord from liability due to the negligence of Landlord, its agents, servants or employees. Landlord shall proceed diligently to perform all such repairs, alterations, replacements or improvements.

2 equally by Landlord and Tenant

INITIAL HERE

adjustment pursuant to this Section) by an amount equal to the value of such additional service as so determined. Any such increase shall be effective as of the date of the first availability to Tenant of such additional service and shall be retroactive to such date if necessary.

C. If, at any time or times after the date of this Lease, the rates at which Landlord purchases any of the Utilities from the entity supplying such service to the Demised Premises, or any charges incurred or taxes payable by Landlord in connection therewith, shall be increased or decreased, the Utility Charge shall be increased or decreased, as the case may be, upon demand of either party, in an annual amount which shall fairly reflect the estimated increase or decrease in the annual cost to Landlord of furnishing same to Tenant under the provisions of this Section. If, within 10 days after any such demand, Landlord and Tenant shall fail to agree upon the amount of such increase or decrease in Utility Charge, then, in lieu of such agreement, the estimated increase or decrease in the annual cost to Landlord of furnishing same to Tenant under the provisions of this Section shall be finally determined by an independent engineer or other recognized authority selected
1 by Landlord and paid for ~~by Tenant~~ who shall certify such determination in writing to Landlord and Tenant. Following any such agreement or determination, Landlord and Tenant shall enter into a written supplementary agreement, in form satisfactory to Landlord, modifying this Lease by increasing or decreasing, as the case may be, the Utility Charge for the remainder of the Lease Term (subject to further adjustment pursuant to this Section) by an amount equal to such estimated increase or decrease in the annual cost to Landlord of furnishing same to Tenant, as so agreed or determined. Any such increase or decrease in the Utility Charge shall be effective as of the date of such rate increase or decrease and shall be retroactive to such date if necessary.

Trial Exhibit 15

D. If at any time after the Commencement Date Tenant's use of any of the Utilities is increased the Utility Charge then payable hereunder shall be increased by an amount equal to the value of the estimated increase in such use. Landlord may
2 cause, at Tenant's expense, a survey and inspection of the Demised Premises and Tenant's equipment and installations therein to be made at any time it may deem advisable to make a determination of the value of the Utilities furnished to Tenant. If such inspection and survey shows that the Utility Charge then payable hereunder does not fairly reflect the value of service to Tenant, such Utility Charge shall be increased by an amount reflecting the value of such service to Tenant. Any such survey and inspection shall be done by an independent engineer or other recognized authority selected by Landlord, who shall certify such determination in writing to Landlord and Tenant. Following any such determination Landlord and Tenant shall enter into a written supplementary agreement, in form satisfactory to Landlord, modifying this Lease by increasing the Utility Charge for the remainder of the Lease Term (subject to further adjustment pursuant to this Section) by an amount equal to the value of such service to Tenant. Any such increase shall be effective as of the date of the inspection and survey and shall be retroactive to such date if necessary.

E. Any increase in the Utility Charge pursuant to the provisions of this Section with respect to the period from the effective date of such increase to the last day of the month in which such increase shall be fixed by agreement or determination shall be payable by Tenant upon demand of Landlord. Any decrease in the Utility Charge pursuant to the provisions of this Section with respect to the period from the effective date of such decrease to the last day of the month in which such decrease shall be fixed by agreement or determination shall be credited to Tenant against the next monthly installment of the Utility Charge. The monthly installments of the Utility Charge payable after the date upon which any such increase or decrease is so fixed shall be adjusted to reflect such increase or decrease in the Utility Charge.

F. Landlord may, at any time and from time to time, elect to discontinue the furnishing of any or all of the Utilities. In the event of any such election by Landlord, (a) Landlord agrees to give not less than ~~30~~ days advance notice of any such
60

1 equally by Landlord and Tenant
2 Landlord's and

INITIAL HERE

discontinuance to Tenant unless such notice is not ~~feasible~~ possible under the circumstances in which event Landlord will give Tenant such reasonable advance notice as is possible, (b) Landlord agrees to permit Tenant to receive any of the Utilities so discontinued directly from the entity supplying the same to the Shopping Center and to permit the existing equipment and installations and other facilities serving the Demised Premises to be used by Tenant for such purpose to the extent they are available, suitable and safely capable, (c) ~~Tenant~~ Landlord agrees, at its sole cost and expense, to install and to pay for any additional necessary equipment, including, without limitation, rewiring, (d) the Utility Charge shall be decreased by an amount calculated pursuant to Exhibit D, as adjusted pursuant to Subsections B, C and D of this Section, to reflect such discontinuance, and (e) this Lease shall remain in full force and effect and such discontinuance shall not constitute actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Fixed Minimum Rent or Additional Rent except as expressly provided in this Subsection, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or Landlord's agents.

Article VII. Landlord's Additional Covenants

Section 7.1. *Repairs by Landlord.* Landlord covenants to keep, or cause to be kept, in good order, repair and condition, the foundations, roof and downspouts of the Demised Premises, the structural soundness of the floors and walls thereof installed as part of Landlord's Work, and the pipes, ducts, conduits and wires running through the Demised Premises and installed therein as part of Landlord's Work (but not including Tenant's connections to any pipes, ducts, conduits or wires within or without the Demised Premises), except such repairs as are necessitated or occasioned by the acts, omissions or negligence of Tenant in the performance of Tenant's Work or otherwise. Landlord shall not be required to commence any such repair, except in the case of an emergency, until 15 days after written notice by Tenant to Landlord that such repair is necessary. The provisions of this Section shall not apply in the case of damage or destruction by fire or other casualty or by eminent domain, in which events the obligations of Landlord shall be controlled

by Article IX. Except as provided herein and in Section 6.1, Landlord shall not be [1] obligated to make repairs, replacements or improvements of any kind to the Demised Premises or to any equipment, facilities or fixtures contained therein.

SECTION 7.2. *Quiet Enjoyment.* Landlord covenants that Tenant, upon paying the Fixed Minimum Rent and Additional Rent and performing Tenant's obligations under this Lease, shall peacefully and quietly have, hold and enjoy the Demised Premises and the appurtenances thereto throughout the Lease Term without hindrance, ejection or molestation by Landlord or any person, firm or corporation lawfully claiming under Landlord, subject to the other terms and provisions of this Lease, to all mortgages and underlying or overriding leases to which this Lease may be or become subject and subordinate and to the operating agreement, as the same may from time to time be amended, by and between Sears, Roebuck and Co., R. H. Macy & Co., Inc. and Staten Island Mall ("Operating Agreement"). [2]

SECTION 7.3. *Landlord's Liability.* A. In the event of a sale or transfer of all or any portion of the Shopping Center, or any undivided interest therein, or in the event of the making of an underlying or overriding lease of all or any part of the Shopping Center which includes the Demised Premises, or in the event of a sale or transfer of the leasehold estate under any such lease, the grantor, transferor or lessor, as the case may be, shall thereafter be entirely relieved of all terms, covenants and obligations thereafter to be performed by Landlord under this Lease to the extent of the interest or portion so sold, transferred or leased, and it shall be deemed and construed, without further agreement between the parties and the purchaser or transferee on any such sale or transfer, or the lessee under any

INITIAL HERE

1 or occasioned by the negligence of Landlord, its agents, servants or employees,

2 Landlord represents that this Lease has been made in compliance with the Operating Agreement and cannot be terminated under the Operating Agreement.

such lease, as the case may be, that the said purchaser, transferee or lessee, as the case may be, has assumed and agreed to carry out any and all covenants of Landlord hereunder; provided that (i) any amount then due and payable to Tenant or for which the grantor, transferor or lessor would otherwise then be liable to pay to Tenant (it being understood that the owner of an undivided interest in the fee or any such lease shall be liable only for his or its proportionate share of such amount) shall be paid to Tenant by such grantor, transferor or lessor; (ii) the interest of the grantor, transferor or lessor, as Landlord, in any funds then in the hands of the grantor, transferor or lessor in which Tenant has an interest, shall be turned over, subject to such interest, to the then grantee, transferee or lessee; and (iii) notice of such sale, transfer or lease shall be delivered to Tenant. Upon the termination of any such lease, the lessor thereunder shall become and remain personally liable as Landlord hereunder only so long as there shall not be made another such lease. As long as any such lease shall be in force and effect, it is expressly understood and agreed that there shall be no personal liability hereunder on the lessor.

B. No recourse shall be had on any of the terms, covenants or obligations to be performed by Landlord under this Lease or for any claim based thereon or otherwise in respect thereof against any incorporator, subscriber to the capital stock, stockholder, officer or director, past, present or future, of any corporation which shall be Landlord hereunder or included in the term "Landlord," or of any successor of any such corporation, or against any principal, disclosed or undisclosed, or any affiliate of any party which shall be Landlord or included in the term "Landlord," whether directly or through Landlord or through any receiver, assignee, trustee in bankruptcy or through any other person, firm or corporation, whether by virtue of any constitution, statute or rule of law or by enforcement of any assessment of penalty or otherwise, all such liability being expressly waived and released by Tenant.

C. In any action brought to enforce the obligations of Landlord under this Lease, any judgment or decree shall be enforceable against Landlord only to the extent of Landlord's interest in the Shopping Center and no such judgment shall be the basis of execution on, or be a lien on, assets of Landlord other than its interest in the Shopping Center.

Article VIII. Tenant's Additional Covenants

Section 8.1. *Affirmative Covenants.* Tenant covenants, at its expense, at all times during the Lease Term:

A. *Performance of Obligations and Payment of Fixed Minimum Rent and Additional Rent.* To perform promptly all of the obligations of Tenant set forth in this Lease and in the Exhibits; and to pay when due the Fixed Minimum Rent and Additional Rent.

B. *Use.* To use the Demised Premises only for the Permitted Uses as defined in Section 1.1; to operate its business in the Demised Premises under the Tenant's Trade Name as defined in Section 1.1; and to conduct its business at all times in accordance with this Lease and in such manner as to produce the maximum volume of Gross Sales and to help establish and maintain a high reputation for the Shopping Center.

C. *Continuous Operation.* Except when and to the extent that the Demised Premises may be untenantable by reason of damage by fire or other casualty, continuously and uninterruptedly to use, occupy and operate only for Permitted Uses and for no other purpose all of the Demised Premises other than such minor portions thereof as are reasonably required for storage and office purposes; to use such storage and office space only in connection with the business conducted by Tenant in the Demised Premises; to furnish, install and maintain all trade fixtures and permitted signs; to carry a full and complete stock of

seasonable merchandise; to maintain adequate trained personnel for efficient service to customers; to open for business and remain open during the entire Lease Term during all hours on all days when the Shopping Center is to be open for business to the public as determined by Landlord; to light its display windows and signs during those hours and on those days when the Covered Mall is kept illuminated by Landlord (but Tenant shall not be obligated to keep the same illuminated beyond 11:00 p.m. on any day). 1

D. *Storage and Deliveries.* To store in the Demised Premises only such merchandise as is to be offered for sale at retail within a reasonable time after receipt; to store all trash and refuse in appropriate containers within the Demised Premises so as not to be visible to the public and to attend to the daily disposal thereof in the manner and by the agency designated by Landlord; to keep all drains inside the Demised Premises open; and to receive and deliver goods and merchandise only in the manner and areas and at times designated by Landlord.

E. *Repairs.* Except for repairs required in Sections 6.1 and 7.1 to be performed by Landlord, to keep and maintain the Demised Premises, including equipment, facilities and fixtures therein, and Tenant's connections to any pipes, ducts, conduits and wires within or without the Demised Premises, and the entire store front (including store front metal work), clean, neat and in good order, repair and condition (including all necessary painting and decorating) and free of vermin, and to keep all glass, including that in windows, doors and skylights, clean and in good condition, and to replace any glass which may be damaged or broken with glass of the same quality.

F. *Repairs, etc. Required by Governmental Regulations.* To make all repairs, alterations, additions or replacements to the Demised Premises, including equipment, facilities and fixtures therein, made necessary by Tenant's use or occupancy of the Demised Premises and required by any law or ordinance or any order or regulation of any governmental authority or board of fire underwriters having jurisdiction thereof or of any insurance company providing

coverage on any part of the Shopping Center; to keep the Demised Premises equipped with all safety appliances so required; and otherwise to comply with the orders and regulations of all such governmental authorities, board of fire underwriters and insurance companies.

G. *Performance of Work.* To pay promptly when due the entire cost of any work done in or with respect to the Demised Premises or the installation of any equipment, facilities and fixtures therein, undertaken by Tenant so that the Demised Premises shall at all times be free of liens for labor and materials; to procure all necessary permits before undertaking such work; to do all such work in a good and workmanlike manner acceptable to Landlord, employing materials of good quality; to perform such work in such manner as to insure proper maintenance of good and harmonious labor relationships; to comply with all governmental requirements relating thereto; and to save Landlord harmless and indemnified from all injury, loss, claims or damage to any person or property occasioned by or growing out of such work.

H. *Indemnity.* To defend and save Landlord harmless and indemnified from all injury, loss, claims, demands, actions or damage (including attorney's fees and disbursements) to any person or property, arising from, related to, or in connection with the use or occupancy of the Demised Premises or conduct or operation of Tenant's business caused, suffered or permitted by Tenant or Tenant's concessionaires or by any of their respective officers, agents, servants, employees or contractors.

I. *Insurance.* To maintain with responsible companies authorized to do business in the State of New York and approved by Landlord (i) liability insurance, with contractual liability endorsement covering the matters set forth in

1 See Rider

INITIAL HERE

Trial Exhibit 15

Subsection H above, against all claims, demands or actions for injury to or death of any one person in an amount of not less than $500,000 and for injury to or death of more than one person in any one accident in an amount of not less than $1,000,000 and for damage to property in an amount of not less than $50,000, made by or on behalf of any person, firm or corporation, arising from, related to, or connected with the conduct or operation of Tenant's business, or caused by acts or omissions of Tenant or Tenant's concessionaires, or their respective officers, agents, servants, employees or contractors (such liability insurance coverage shall include a "personal injury" endorsement covering claims arising out of false arrest, false imprisonment, defamation of character, libel and slander, wrongful eviction and invasion of privacy without exclusion of coverage for claims for "personal injury" brought by employees of an insured); (ii) Steam Boiler and Machinery Insurance to the limit of $500,000 if there is a boiler or pressure equipment or other similar equipment in the Demised Premises; ~~(iii) plate glass insurance covering all plate glass in the Demised Premises~~; (iv) fire insurance, with the usual extended coverage endorsement and endorsements for vandalism, malicious mischief and sprinkler leakage and such other extended coverage endorsements as Landlord may reasonably from time to time require, covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings, equipment, signs, store front and all other installations and improvements made by Tenant in, on or about the Demised Premises to the extent of their full insurable value. Landlord, its agents, servants and employees and tenants and occupants of the Shopping Center shall not be liable for any damage by fire or other casualty covered by Tenant's insurance, no matter how caused, it being understood that the Tenant will look solely to its insurer for reimbursement. Whenever, in Landlord's judgment, good business practice indicates the need for additional insurance coverage or different types of insurance, Tenant shall, upon demand,

1 obtain such insurance at its expense. All of said insurance shall be in form satisfactory to Landlord and shall provide that it shall not be subject to cancellation, termination or change except after at least 30 days' prior written notice to Landlord. All insurance provided by Tenant as required by this Subsection shall name Landlord and the lessor under any underlying or overriding lease as additional insureds as their interests may appear and shall include the holder of any mortgage on the fee or on any underlying or overriding leasehold under a standard mortgagee clause. In the case of insurance against damage by fire or other casualty, the policy or policies shall provide that loss shall be adjusted jointly with Landlord and Tenant and, at Landlord's election, shall be payable either to a bank or trust company doing business in the City of New York with assets of $10,000,000 or more as Insurance Trustee, to be held and disbursed as provided in Section 9.1E, or to the holder of any mortgage on the fee or on any underlying or overriding leasehold or to the ground lessor. On the day Tenant commences Tenant's Work the original insurance policy or policies, or appropriate certificates, together with satisfactory evidence of the payment of the premium therefor, shall be deposited with Landlord. Any renewals, replacements or endorsements thereto shall also be deposited with Landlord to the end that said insurance shall be in full force and effect during the Lease Term. If Tenant fails to comply with the requirements of this Subsection, Landlord may, but shall not be obligated to, obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the
2 premium therefor upon demand.

J. Increase in Insurance Premiums. To pay upon demand any increase in insurance premiums which Landlord may be obligated to reimburse to other tenants or occupants of the Shopping Center under the terms of their respective leases or occupancy agreements, resulting from Tenant's use or occupancy or unauthorized vacancy of the Demised Premises. In determining whether increased premiums are the result of Tenant's use of the Shopping

1 unless at such time the net worth of the Guarantor, as shown on its latest available annual statement is $50,000,000 or more, in which event Tenant may self-insure with respect to such additional coverages.
2 See Rider

INITIAL HERE

Center or Tenant's use or occupancy or unauthorized vacancy of the Demised Premises, a schedule or "make-up" rate of the insurer issuing the fire insurance policy described in Subsection I of this Section or any all-risk insurance rates for the Demised Premises or any rule books issued by the rating organization or similar bodies or by rating procedures or rules of Landlord's insurance companies shall be conclusive evidence of the several items and charges which make up the insurance rates and premiums on the Demised Premises and the Shopping Center.

K. *Property Loss or Damage.* That neither Landlord nor Landlord's agents shall be liable for, and Tenant waives all claims for any and all loss, cost, liability, damage and expense (including attorney's fees and disbursements), penalties and fines incurred in connection with or arising from any injury to Tenant or to any other person or for any damage to, or loss (by theft or otherwise) of, any of Tenant's property and/or of the property of any other person, irrespective of the cause of such injury, damage or loss (including the acts or negligence of any tenant or occupant of the Shopping Center or of any owners or occupants of adjacent or contiguous property) and whether occasioned by or from explosion, falling plaster, broken glass, electricity, smoke, wind, water, snow or ice being upon or coming through or from the street, roof, subsurface, skylight, trapdoor or windows, electric wiring, plumbing, dampness, water, gas, steam or other pipes or sewage, or the failure of the air-conditioning or refrigeration system, or the breaking of any electric wire, the bursting, leaking or running of water from any tank, washstand, watercloset, waste-pipe, sprinkler system, radiator, or any other pipe in, above, upon or about the Demised Premises or the Building, or which may at any time hereafter be placed therein, or from any other cause whatsoever. 1

L. *Right of Entry.* That Landlord and Landlord's agents, contractors, servants and employees shall have the right to enter upon the Demised Premises at all reasonable times (a) to examine the Demised Premises or for the purpose

of performing any obligation of Landlord or exercising any right or remedy reserved to Landlord in this Lease; (b) to exhibit the Demised Premises to prospective purchasers, mortgagees or lessees; (c) to make such repairs, alterations, improvements or additions in the Demised Premises or in the Shopping Center as Landlord may deem necessary or desirable; and (d) to take all materials into and upon the Demised Premises that may be required in connection with such repairs, alterations, improvements or additions without the same constituting a constructive or actual eviction of Tenant, in whole or in part, and the Fixed Minimum Rent and Additional Rent shall not abate while such repairs, alterations, improvements or additions are being made. Tenant shall permit Landlord to install, use and maintain pipes, ducts and conduits within or through the Demised Premises, or through the walls, columns and ceilings therein, provided that the installation work is performed at such times and by such methods as will not unreasonably interfere with Tenant's use and occupancy of the Demised Premises, or damage the appearance thereof, or materially adversely affect the layout of the Demised Premises. If, during the last month of the Lease Term, Tenant shall have removed all or substantially all of Tenant's property therefrom, Landlord may immediately enter and alter, renovate and redecorate the Demised Premises without elimination or abatement of Fixed Minimum Rent and Additional Rent and without other compensation and such action shall have no effect upon this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, supervision or repair of the Shopping Center or of the Demised Premises, other than as in this Lease otherwise provided.

M. *Fees and Expenses.* To pay upon demand Landlord's expenses (including reasonable attorneys' fees and disbursements) incurred in enforcing any obligation of the Tenant under this Lease or in curing any default by Tenant under this Lease, as provided in Sections 10.3 and 10.6.

1 except for losses caused by the negligence of Landlord, its agents, servants or employees.

INITIAL HERE

N. *Mechanics' Liens.* To cause promptly to be discharged of record (by payment, bond, order of a court of competent jurisdiction or otherwise) any mechanic's lien at any time filed against the Demised Premises, or the Shopping Center, for any work, labor, services or materials claimed to have been performed at, or furnished to, the Demised Premises, for or on behalf of Tenant, or any one holding the Demised Premises through or under Tenant. If Tenant shall fail to cause such lien to be discharged upon demand, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all costs and expenses (including attorneys' fees and disbursements) incurred by Landlord in procuring the discharge of such lien, shall be deemed to be Additional Rent. Nothing in this Lease contained shall be construed as a consent on the part of Landlord to Tenant permitting the rendering of any services or the furnishing of any materials which would subject Landlord's estate in the Demised Premises or the Shopping Center to any lien or liability under the Lien Law of the State of New York.

O. *End of Lease Term.* Upon the Expiration Date to quit and surrender to Landlord the Demised Premises broom clean, in good order, condition and repair except for ordinary wear and tear and damage by fire or other insured casualty and free of all property of Tenant. Each alteration, addition and improvement made by Tenant ~~as to which Landlord shall have made the election~~
1 provided for in Section 3.9 shall be removed and Tenant shall repair all damages to the Demised Premises caused by such removal and shall restore the Demised Premises to their condition prior to the making of each such alteration, addition and improvement. Any such alteration, addition or improvement and any property of Tenant which shall remain in the Demised Premises after the Expiration Date may be deemed by Landlord to have been abandoned by Tenant and may be retained or disposed of by Landlord. If such alteration, addition or improvement or property of Tenant or any part thereof shall be

sold, Landlord may receive and retain the proceeds of such sale and apply the same, at its option, against the expenses of the sale, cost of moving and storage, any arrears of Fixed Minimum Rent or Additional Rent or any damages to which Landlord may be entitled pursuant to this Lease. Any excess proceeds shall be the property of Landlord. Any expense in excess of the proceeds of such sale incurred by Landlord in removing or disposing of such property shall be reimbursed to Landlord by Tenant on demand. If the Expiration Date falls on a Sunday, the Lease Term shall expire on the business day immediately preceding. Immediately upon the failure of Tenant to perform any covenant of this Subsection. Landlord may, without notice, perform any such covenant and shall be entitled to receive from Tenant as liquidated damages the then cost of performance of such covenant, such damages to be paid in addition to and separate and independently from damages accruing by reason of breach of any other covenant of the Lease. Tenant's obligation to observe or perform the covenants contain in this Subsection and Landlord's rights hereunder shall survive the Expiration Date.

P. *Merchants' Association.*

(i) To pay to "Feist & Feist, as managing agent." upon the execution of this Lease, the sum of $100 in payment of the initiation fee of the Staten Island Mall Merchants' Association ("Association"). Feist & Feist shall deliver such fee to the Association. Tenant agrees, for the express benefit of the Association and Landlord, to join and to maintain membership in good standing in the Association during the entire Lease Term, to comply with the provisions of the By-Laws of the Association, and to participate in all of the
2 activities of the Association; provided that neither the By-Laws of the Association nor any amendment thereof shall be deemed to have been adopted by the Association unless approved by members of the Association who

1 which is required to be removed on or prior to the Expiration Date in accordance with

2 (except if Tenant is not permitted to do so by law, in the written opinion of a law firm retained by Tenant);

INITIAL HERE

occupy at least 75% of the Floor Space leased to members of the Association and devoted to the purpose of selling goods and/or consumer services to the public at retail. 1

(ii) As used in this Subsection:

(a) The term "Index" shall mean the "New York City Average for All Items portion of the Revised 1953 Consumer Price Index—New Series for Urban Wage Earners and Clerical Workers (1967 = 100)" issued by the Bureau of Labor Statistics of the U.S. Department of Labor.

(b) The term "Base Number" shall mean the Index for the first full calendar month of the Lease Term.

(c) The term "Current Number" shall mean the latest Index published for the month of December (or if no Index is published for December, for the smallest period for which an Index is published which includes such December 1) immediately preceding the commencement of the respective Lease Year by the Bureau of Labor Statistics, or other governmental agency then publishing the Index (or if the Index is no longer published, the index of consumer prices in New York City most closely comparable to the Index), after making such adjustments as may be prescribed by the agency publishing the same or as otherwise may be required to compensate for changes subsequent to December 1, in the base, the items included, or the method of compilation, thereof.

(iii) Commencing on the Commencement Date, Tenant agrees to pay monthly minimum dues to the Association at the annual rate of 20¢ per square foot of Floor Space in the Demised Premises, subject to (a) annual adjustments, approved by a majority of the members of the Association, increasing said minimum dues to the extent required by increases in the costs of promotional, public relations and advertising services and (b) annual adjustments based on increases or decreases of the Index and com-

puted as hereinafter provided in this Subsection, provided, however, that the dues shall not be reduced below the annual rate of 20¢ per square foot by reason of any decrease in the Index. (The annual rate of 20¢ per square foot as adjusted pursuant to (a) and (b) above is called "Annual Dues Rate.") The Association shall furnish to Tenant within 30 days following publication of the Current Number in each Lease Year a statement of the Annual Dues Rate then in effect and the Annual Dues Rate for the next succeeding Lease Year. After receipt of a statement, Tenant shall pay to the Association monthly dues in accordance with such statement until receipt of a new statement. If the statement is furnished to Tenant after the commencement of any Lease Year, Tenant shall promptly pay to the Association or the Association shall credit against the next succeeding payments of dues, an amount equal to the deficiency or overpayment of the dues allocable to the part of the Lease Year which shall have elapsed prior to the first day of the calendar month next succeeding the calendar month in which Tenant was furnished the statement. The adjustment based on the Index shall be computed by multiplying the Annual Dues Rate then in effect by a fraction, the numerator of which is the Current Number and the denominator of which is the Base Number.

(iv) Tenant also agrees to pay to the Association an initial assessment, in addition to the foregoing dues and the initiation fee, in an amount equal to 20¢ per square foot of Floor Space in the Demised Premises for the purpose of defraying the promotional, public relations and advertising expenses to be incurred in connection with the opening of the Shopping Center. The initial assessment shall be paid by Tenant immediately after

1 Tenant shall have the option of terminating its membership in the Association upon the date when Landlord and all Department Stores shall cease to be members of the Association.

INITIAL HERE

Landlord gives Tenant notice that it is contemplated by Landlord that the Shopping Center will open for business within 60 days thereafter.

(v) Landlord shall pay to the Association for the continuing promotion of the Shopping Center an amount equal to not less than 25% of the aggregate annual dues actually paid by the members of the Association excluding the occupants of the Department Stores.

(vi) Tenant agrees to purchase advertising space in any "shopper," newspaper, magazine, flyer, notice or other promotional material published, printed or distributed by the Association in accordance with the following schedule: 1

Floor Space of Demised Premises	Minimum Advertising Space per Issue
Up to 1,000 Square Feet	¼ Page
1,001 to 3,000 Square Feet	½ Page
Above 3,000 Square Feet	1 Page

Landlord may, at its option, terminate its membership in the Association at any time on or after the fifth anniversary of the Commencement Date. In the event that Landlord shall so terminate its membership in the Association, Landlord shall have no further obligation to make payments of any kind to the Association.

Q. *Subordination.* That this Lease is and all of Tenant's rights hereunder are and shall be subject and subordinate to any existing or future ground, overriding or underlying lease of all or any part of the Shopping Center and grants of term of all or any part of the land and/or the Building or the portion thereof in which the Demised Premises are located, in whole or in part, and this Lease and all of Tenant's rights are and shall be subject and subordinate to the Operating Agreement and to any fee or leasehold mortgages, deeds of trust, and/or building loan agreements that now exist or may hereafter be placed upon the Shopping Center or any part thereof and to any and all advances to

be made thereunder, and to the interest thereon, and all renewals, replacements, modifications, consolidations, spreaders and extensions thereof (the foregoing provisions of this Subsection shall be self-operative and no further instrument of subordination shall be required): that Tenant will attorn to and recognize the purchaser at any foreclosure sale or at any sale under a power of sale contained in any such mortgage or deed of trust, as the case may be, as Landlord under this Lease for the balance then remaining of the Lease Term, subject to all of the terms of this Lease; that Tenant shall execute and deliver whatever instruments may be required to acknowledge such subordination and agreement to attorn in recordable form, and in the event
30 Tenant fails so to do within 10 days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney in fact and in its name, place and stead so to do. Any mortgagee or trustee under any such mortgage or deed of trust or the lessor under any such ground, overriding or underlying lease may elect that this Lease shall have priority over its mortgage, deed of trust or lease and upon notification to Tenant of such election by such mortgagee, trustee or lessor, this Lease shall be deemed to have priority over said mortgage, deed of trust or ground, overriding or underlying lease whether this Lease is dated prior to or subsequent to the date of said mortgage, deed of trust or lease. Tenant will give prompt written notice to the mortgagee or trustee under any such mortgage or deed of trust and the lessor under any such ground, overriding or underlying lease of any default of Landlord in its obligations under this Lease, if such default is of such a nature as to (i) give Tenant a right to terminate this Lease, (ii) reduce the Fixed Minimum Rent or Additional Rent due hereunder or (iii) credit or offset any amounts against future installments of Fixed Minimum Rent or Additional Rent payable here-

1 With respect to such advertising space, Tenant shall either (i) deliver to Landlord the written opinion of a law firm retained by Tenant that Tenant is not permitted by law to so advertise, or (ii) purchase and pay for such advertising space, whether Tenant shall use same or not.

INITIAL HERE

under, provided that Tenant shall not be obligated to give such notice to any such person who shall not have advised Tenant in writing of his status as mortgagee, trustee or lessor, as the case may be, and of the address to which such notices should be sent. In the event of any such default, any such mortgagee, trustee or lessor shall be given 30 days from the date of the above notice during which to cure any such default, or if such default is of such nature that it cannot be completely remedied within such 30 day period, a reasonable time, provided such mortgagee, trustee or lessor diligently pursues remedying the default. If, in connection with the obtaining, continuing or receiving of financing for which all or any part of the Shopping Center represents collateral in whole or in part, any such mortgagee, trustee or lessor shall request reasonable modifications of this Lease as a condition of such financing, Tenant will not unreasonably withhold or delay its consent thereto, provided that such modifications do not ~~materially and adversely~~ affect the rights of Tenant under this Lease. 1

R. *Attornment.* To attorn to any lessor under any ground, overriding or underlying lease affecting all or any part of the Shopping Center and to recognize any such lessor as Landlord under this Lease in the event any proceedings are brought for the termination of any such ground, overriding or underlying lease affecting all or any part of the Shopping Center and the lessor thereunder elects or is obligated to recognize Tenant, and further, to attorn to and recognize as Landlord under this Lease, any party to the Operating Agreement succeeding to Landlord's position under this Lease pursuant to the terms of the Operating Agreement. The foregoing provisions of this Subsection shall (i) enure to the benefit of any such lessor, (ii) apply notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any such ground, overriding or underlying lease, (iii) be self-operative, upon demand by such lessor and no further instrument shall be required to give effect to said provisions. Tenant, however, upon demand of any such lessor, agrees to execute, from time to time, instruments in confirmation of the foregoing provisions of this Subsection, satisfactory to any such lessor, acknowledging such attornment and setting forth the terms and conditions of its tenancy. Nothing contained in this Subsection shall be construed to impair any right otherwise exercisable by any such lessor.

S. *Reference to Shopping Center.* To refer to the Shopping Center as "Staten Island Mall, Staten Island, New York" in designating the location of the Demised Premises in all newspaper or other advertising, stationery or other printed material and all other references to the location of the Demised Premises to include the address, identity and telephone number of its business activity in the Demised Premises in all advertisements in any manner, in any medium (including, without limitation, newspapers, magazines, radio, television, catalogs, handbills, and telephone listings), made by Sub-Tenant in which the address, identity and telephone number of any other business activity of like character conducted by Sub-Tenant in the City of New York shall be mentioned and to use in such advertising only Sub-Tenant's Trade Name specified in Section 1.1 hereof, unless otherwise permitted by Landlord in writing. 2 3

Initial

T. *Continuing Liability.* To remain fully obligated under this Lease notwithstanding any assignment or sublease, or any indulgence granted by Landlord to Tenant or to any assignee or sublessee.

U. *Permits and Licenses.* To obtain and keep in full force and effect all permits or licenses necessary to conduct business in the Demised Premises.

V. *Signs.* To provide, in accordance with Subsection IIIC of Exhibit C, a suitable identification sign or signs of such size, design and character as Landlord shall approve, and install the same at a place or places designated by Landlord. Tenant shall maintain any such sign or other installation in good condition and repair.

1 See Rider

2 if Tenant's sublessee shall agree,
3 local

W. *Rules and Regulations.* To conform to all reasonable rules and regulations which Landlord may make for the management and use of the Shopping Center.

X. *Fire Safety.* To provide proper education and training of its concessionnaires, agents, servants and employees with respect to fire safety procedures including the conducting of fire and evacuation drills, as from time to time may be required by any Administrative Code of the City of New York or any other applicable law, code, ordinance or regulation..

SECTION 8.2. *Negative Covenants.* Tenant covenants at all times during the Lease Term and such further time as Tenant occupies the Demised Premises or any part thereof:

A. *Competition.* That neither Tenant nor any Affiliate of Tenant, shall directly or indirectly, operate, manage or have any interest in any other store within the Retail Restriction Limit. In the event Tenant or any Affiliate of Tenant should violate this covenant, without limiting Landlord's remedies, including Landlord's right to obtain an injunction, Landlord may, at its option, include the gross sales of such other store in the Gross Sales transacted in the Demised Premises for the purpose of computing Percentage Rent due hereunder. In the event Landlord so elects, all of the provisions of Section 4.3C shall be applicable to all records pertaining to such competing store. 1

B. *Alcoholic Beverages.* Not to sell, display, or distribute any alcoholic liquors or beverages for consumption off the Demised Premises.

C. *Use.* Not to injure, overload, deface or otherwise damage the Demised Premises or any part thereof or any equipment or installation therein; or commit any nuisance; or permit the emission of any objectionable noise or odor; or burn any trash or refuse within the Shopping Center; or install or cause to be installed any automatic garbage disposal equipment; or conduct business at, in, on, about or from all or any part of the Demised Premises on any Sunday 2 unless Landlord shall consent thereto in writing; or make any use of the Demised Premises or of any part thereof or equipment therein which is improper, of- reasonable fensive or contrary to any law or ordinance or to rules and regulations of

Landlord as such may be promulgated from time to time; or use or permit the use of any advertising medium, including, without limitation, flashing lights, search lights, loudspeakers, televisions, phonographs, radios, sound amplifiers
3 or other devices in a manner so as to constitute a nuisance ~~or be heard or experienced outside the Demised Premises~~; or conduct any auction, fire, "going out of business" or bankruptcy sales; or do any act tending to injure the reputation of the Shopping Center; or use or occupy the Demised Premises, or suffer or permit them to be used or occupied in whole or in part, as a discount house, discount store, surplus store, Army-Navy type store, bargain store, or any similar business or activity; or sell or display merchandise on, or otherwise obstruct, the Common Areas or any other area outside the confines of the Demised Premises; or permit the officers, agents, servants, employees or contractors of Tenant or its concessionaires to use any parking facility other than those designated by Landlord for such use; or use the malls, courts and walks for any purpose other than pedestrian traffic. For the purposes of this Lease, the terms "discount house" and "discount store" shall mean a retail establishment which regularly sells the major portion of its merchandise off-price or at prices below normal usual retail prices, or advertises or holds itself out to the public as a discount house or as one rgularly selling off-price. Landlord may provide, outside the Demised Premises, a combination background music and public address system for the playing of music and for paging. In the event Landlord provides such system, Tenant may subscribe thereto. If Tenant so subscribes, Landlord shall provide a junction box connected to such system at such location outside the Demised Premises as Landlord may select and Tenant, at its expense, shall furnish and

INITIAL HERE

1 Notwithstanding the foregoing, Tenant and Guarantor shall be permitted to sell their products at wholesale within the Retail Restriction Limit, provided that such sales are not made in or from the Demised Premises.

2 (in the event the Covered Mall is open for business on Sunday, then Tenant shall also open for business on such Sunday)

3 and Tenant shall use its best efforts to prevent such sounds from being heard outside of the Demised Premises.

install all wires, speaker cables and speakers in order to connect to such system. The installation of wires, cables and speakers shall be performed in accordance with all requirements of applicable building codes and the terms of this Lease. Tenant shall pay to Landlord such reasonable connection and subscription charges as Landlord may establish.

D. *Alterations.* Not to make any alterations or additions to the Demised Premises, or permit the making of any holes in the walls, ceilings or floors thereof installed as part of Landlord's Work, without on each occasion obtaining prior written consent of the Landlord; or attach interior signs, placards, or other advertising media or other objects to the windows, doors, valance or ceiling or locate the same either outside of or within fifteen feet from the outside of the Demised Premises in such manner as to substantially obstruct the view of the interior of the Demised Premises from the mall area or from the outside.

E. *Vending Machines.* Not to operate any coin or token operated vending machine or similar device for the sale of any goods, wares, merchandise, food, beverages, or services, including, but not limited to, pay telephones, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverages, foods, candy, cigarettes or other commodities, without the prior written consent of Landlord.

F. *Assignment, etc.* Not to assign, by operation of law or otherwise, sell, mortgage, pledge or in any manner transfer this Lease or any interest herein, or sublet the Demised Premises or any part or parts thereof, or grant any concession or license or otherwise permit occupancy of all or any part thereof by any person, firm or corporation. Neither the consent by Landlord to an assignment, subletting, concession or license, nor the references in this Lease to concessionaires and licensees shall in any wise be construed to relieve Tenant from obtaining the express consent of Landlord to any further assignment or subletting or the granting of any concession or license for the use of any part of the Demised Premises, nor shall the collection of Fixed Minimum Rent or Additional Rent by Landlord from any assignee, subtenant or other occupant be deemed a waiver of this covenant or the acceptance of the assignee, subtenant or occupant as Tenant or a release of Tenant from the further performance by Tenant of the terms, covenants and conditions in this Lease on Tenant's part to be performed. 1

Trial Exhibit 15

G. *Outside Services.* Not to permit (i) the extermination of vermin to be performed in, on or about the Demised Premises except by a person or company, if any, designated by Landlord; or (ii) laundry accumulated in Tenant's operations or on the Demised Premises to be collected and serviced except by the person or company, if any, designated by Landlord, but in each such case Landlord agrees that the prices to be charged therefor by the person or company so designated shall be competitive; or (iii) refuse or rubbish accumulated in Tenant's operations or on the Demised Premises to be collected and removed except by the person or company, if any, designated by Landlord, but in each such case Landlord agrees that the prices to be charged therefor by the person or company so designated shall be competitive; or (iv) window cleaning or janitorial services or any other cleaning or maintenance service in or for the Demised Premises, or on the exterior of the Demised Premises to be performed except by its own employees or an outside person or company designated by Landlord, during reasonable hours designated from time to time for such purposes by Landlord. [2] [2] [3]

H. *Freight Handling.* Not to permit the use of any forklift truck, tow truck or any other mechanically powered machine or equipment for handling freight in the Demised Premises or other portions of the Shopping Center (except in delivery areas, service courts and service corridors). All equipment and devices hauling freight in the Demised Premises or portions of the Shopping Center other than in the said excepted areas shall be propelled by

INITIAL HERE

1 See Rider
2 but in each case Landlord agrees that the prices to be charged therefor by the person or company so designated shall be competitive
3 the services to be performed by persons or companies designated by Landlord shall be reasonably suited to Tenant's needs.

hand and shall be provided with rubber tired wheels. No freight shall be hauled into or through the Covered Mall.

I. *Elephant Trains.* Not to operate or cause to be operated any "elephant trains," or other mechanical means of transportation.

J. *Changes in Exterior.* Not to change the exterior color or architectural treatment of the Demised Premises or the Shopping Center or any part thereof or install any exterior lighting.

K. *Signs.* Not to place, install or maintain or suffer to be placed or installed or maintained any sign upon or outside the Demised Premises or in the Shopping Center unless approved by Landlord pursuant to Subsection 8.1V; or any awning, canopy, banner, flag, pennant, aerial, ~~antenna~~ or the like in or on the Demised Premises or the Shopping Center; or place in the windows or display windows any sign, decoration, lettering, advertising matter, shade or blind, other than neatly lettered signs of reasonable size placed on the floor thereof identifying articles offered for sale and the price thereof, without first obtaining Landlord's written approval and consent in each instance. 1

L. *Floor Loads.* Not to place a load upon any floor of the Demised Premises which exceeds the floor load per square foot area which such floor was designed to carry. If Tenant shall desire a floor load in excess of that for which such floor was designed, upon submission to Landlord of plans showing the location of and the desired floor load for the area in question, Landlord may, at its option, strengthen and reinforce the same, at Tenant's sole expense, so as to carry the load desired. Business machines and mechanical equipment in the Demised Premises shall be placed and maintained by Tenant, at its expense, in such manner as shall be sufficient in Landlord's judgment to eliminate any vibration or noise and prevent annoyance or inconvenience to Landlord or any other tenants of the Shopping Center.

M. *Pay Telephones.* Not to install, operate or maintain or suffer to be installed, operated or maintained any pay public telephone within or without the Demised Premises.

Trial Exhibit 15

~~N. *Trading Stamps.* Not to furnish, sell or give trading stamps or other similar sales inducements to its customers.~~

Article IX. Destruction; Condemnation

Section 9.1. *Fire or Other Casualty.* A. Tenant shall give prompt notice to Landlord of fire damage or other casualty to or in the Demised Premises or the Shopping Center or any part thereof.

B. If (i) the Demised Premises shall be damaged to the extent of more than 25% of the cost of replacement thereof or (ii) Floor Space in the Shopping Center (excluding the Department Store Parcels) shall be damaged to the extent of more than 25% of the cost of replacement thereof, whether or not the Demised Premises shall be damaged, or (iii) Floor Space in the Building shall be damaged to the extent of more than 50% of the cost of replacement thereof, whether or not the Demised Premises shall be damaged, or (iv) the insurance proceeds recovered or recoverable as a result of any damage shall be insufficient to pay fully for the cost of replacement of Landlord's Work with respect to the Demised Premises and the Shopping Center or (v) the Demised Premises or the Shopping Center shall be damaged as a result of an uninsured risk, or (vi) the Demised Premises shall be damaged in whole or in part during the last three years of the Lease Term, then
60 within ~~90~~ days after any such event, Landlord may terminate this Lease by notice to Tenant and upon the date specified in such notice, which shall be not less than 30 days nor more than 60 days after the giving of said notice, this Lease shall terminate as if such date were the Expiration Date.

28

1 Tenant is permitted to install an antenna on the roof of the Building in a location designated by Landlord's architect or engineer.

INITIAL HERE

Trial Exhibit 15

C. If this Lease shall not be terminated as provided in Subsection B of this Section, Landlord shall, at its expense, proceed with so much of the repair or restoration of the Demised Premises and the Shopping Center as was included in Landlord's Work provided for in Section 3.1. All repairs and restoration of the Demised Premises not included in Landlord's Work shall be performed by Tenant, at its expense, promptly and with due diligence. All repairs and restoration by either party shall be done in conformity and in accordance with the procedures specified in Article III and Exhibit C unless Landlord, in Landlord's sole discretion, furnishes to Tenant a substitute Exhibit C within 90 days after such fire or other casualty. In the event of any default by Tenant in the performance of such repairs and restoration, Landlord shall have recourse to the remedies specified in Section 3.5. 1 2

D. If the fire or other casualty shall render the Demised Premises untenantable, in whole or in part, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until substantial completion of the repairs or rebuilding (including the substantial completion by Tenant of Tenant's repairs or restoration within the period provided in Section 1.1 for the completion of Tenant's Work) or, in the event Landlord elects to terminate this Lease, until said date of termination. Said proportion shall be computed on the basis of the ratio which the amount of Floor Space rendered untenantable bears to the total Floor Space of the Demised Premises. 3

E. In the event insurance proceeds recoverable by Tenant for any damage by fire or other casualty shall not be payable to an Insurance Trustee, a mortgagee or lessor as provided by Subsection I of Section 8.1, such insurance proceeds shall be deposited in a special bank account to be opened and maintained by Landlord and shall be disbursed therefrom, not more often than monthly, in payment of the cost of repair or restoration performed by Tenant as the work progresses, upon delivery of certificates ("Certificate"), in form and substance and by a person satisfactory to Landlord, showing that the disbursement to be made represents 85% of the value of work and materials performed and described in the Certificate and that the estimated cost of completion does not exceed the undisbursed balance of such proceeds, exclusive of the 15% retained. The balance of such proceeds shall be paid to Tenant when Tenant shall have (i) satisfactorily completed all Tenant's repairs

or restoration, (ii) furnished evidence satisfactory to Landlord that all of Tenant's repairs or restoration have been completed and paid for in full (and Tenant's repairs or restoration have been accepted by Landlord), that any and all liens therefor have been waived or, in the event filed, discharged of record (by payment, order of a court of competent jurisdiction or otherwise) and that no security interests relating thereto are outstanding, (iii) reimbursed Landlord for the cost of any Tenant's repairs or restoration done for Tenant by Landlord, (iv) furnished to Landlord all certifications and approvals with respect to Tenant's repairs or restoration that may be required from any governmental authority or any board of fire underwriters or similar body for the use and occupancy of the Demised Premises, (v) furnished to Landlord the insurance required by Subsection I of Section 8.1 and (vi) reopened the Demised Premises for business. Disbursements by an Insurance Trustee, a mortgagee or lessor shall be made in a similar manner. If Tenant shall fail to proceed with the repairs or restoration which it is obligated to make under Subsection C of this Section, Tenant shall have no right or claim to the said insurance proceeds which may then be disposed of as Landlord, in its sole discretion, may determine. In the event that Tenant fails to maintain the insurance required pursuant to Subsection I(iv) of Section 8.1, or such insurance proceeds are not sufficient to cover the damage, or such insurance proceeds are not recovered within 60 days after the date of damage then Landlord may require Tenant, before Tenant's entering on the Demised Premises for the purpose of repairing and restoring the Demised Premises, to give Landlord proof satisfactory to Landlord, of Tenant's financial ability to complete and fully pay for such repairs and restoration, including, without limitation, reasonable architect's and attorney's fees, or, in lieu thereof either (i) to furnish to Landlord a bond in an amount satisfactory to Landlord

1 promptly and diligently 29
2 ; provided, however, that such substitute Exhibit C shall be as beneficial to Tenant as the present Exhibit C.
3 and Additional Rent

INITIAL HERE

written by a surety company acceptable to Landlord guaranteeing the completion of such repairs and restoration, including, without limitation, reasonable architect's and attorneys' fees, free of mechanics' liens or (ii) to deposit with Landlord in escrow, at Tenant's option, cash or an unconditional and irrevocable letter of credit issued by a bank satisfactory to Landlord in the sum, estimated by Landlord, required to complete such repairs and restoration, including, without limitation, reasonable architect's and attorneys' fees. If the deposit provided for in (ii) above shall be made, upon (i) the satisfactory completion of all Tenant's repairs and restoration, (ii) the submission of evidence satisfactory to Landlord that all of Tenant's repairs or restoration have been completed and paid for in full (and Tenant's repairs or restoration have been accepted by Landlord), (iii) reimbursement to Landlord for the cost of any Tenant's repairs or restoration done for Tenant by Landlord, (iv) the furnishing to Landlord of all certifications and approvals with respect to Tenant's repairs or restoration that may be required from any governmental authority or any board of Fire Underwriters or similar body for the use and occupancy of the Demised Premises, (v) the furnishing to Landlord of the insurance required by Section 8.1I and (vi) the reopening of the Demised Premises for business, then Landlord shall release such funds from escrow. Landlord, in its sole discretion, shall be entitled, from time to time, to have recourse to any bond, letter of credit or escrow deposit provided by Tenant hereunder to pay bills as the repairs and restoration progress. 1

F. The "cost of replacement," as such term is used in Subsection B of this Section, shall be determined by the company or companies selected by Landlord insuring Landlord against the casualty in question, or if there shall be no insurance, then as the parties hereto shall agree, or in the absence of an insurance company determination or an agreement, by arbitration according to the rules and practice of the American Arbitration Association.

SECTION 9.2. *Condemnation.* A. If the whole of the Demised Premises shall be taken by any public or quasi-public authority under the power of condemnation, eminent domain or expropriation, or in the event of conveyance in lieu thereof, the Lease Term shall cease as of the day possession shall be taken by such authority.

B. If 25% or less of the Floor Space of the Demised Premises shall be so taken or conveyed, the Lease Term shall cease only with respect to the part so taken or conveyed, as of the day possession shall be taken by such authority. 2

C. If more than 25% of the Floor Space of the Demised Premises shall be so taken or conveyed, the Lease Term shall cease only with respect to the part so taken or conveyed, as of the day possession shall be taken by such authority, and either party shall have the right to terminate this Lease upon notice in writing within 30 days after such taking of possession.

D. In the event of any such taking or conveyance of the Demised Premises or any portion thereof, Tenant shall pay Fixed Minimum Rent and Additional Rent to the day when possession thereof shall be taken by such authority with an appropriate refund by Landlord of such Fixed Minimum Rent and Additional Rent as may have been paid in advance for a period subsequent to such date. If this Lease shall continue in effect as to any portion of the Demised Premises not so taken or conveyed, the Fixed Minimum Rent shall be reduced to an amount equal to the product of the remaining Floor Space of the Demised Premises multiplied by the Fixed Minimum Rent per square foot as specified in Section 1.1. The formulae used in computing Tax Rent and Common Area Charges shall be adjusted by substituting the remaining Floor Space in the Demised Premises after such taking for the Floor Space in the Demised Premises prior to such taking and by reducing the Floor Space in the Shopping Center by the number of square feet of Floor Space in the Shopping Center so taken or conveyed. If this Lease shall so continue, Landlord shall, at its expense, make all necessary repairs or alterations so as to constitute the remaining Demised Premises a complete architectural and

INITIAL HERE

1 The provisions of this Section 9.1E shall not be applicable to Tenant if the net worth of the Guarantor as shown on its latest annual statement is $50,000,000 or more at the time any such insurance proceeds are recoverable.

2 , unless the remaining Floor Space of the Demised Premises cannot reasonably ~~possibly~~ be used by Tenant for the continued operation of its business in the Demised Premises, in which event Tenant shall have the right to terminate this Lease upon notice to Landlord within 30 days after such taking.

tenantable unit, but only if the portion of the consequential damages allocable to the portion of the Demised Premises not taken is sufficient to render the remaining Demised Premises a complete architectural and tenantable unit.

E. If more than 25% of the total Floor Space in the Shopping Center (excluding the Floor Space in the Department Stores) or more than 25% of any Department Store shall be so taken or conveyed, or if so much of the parking facilities shall be so taken or conveyed that a reasonable number of parking spaces necessary, in Landlord's judgment, for the continued operation of the Shopping Center shall not be available for use by patrons of the Shopping Center, or if any means of ingress to and egress from the Shopping Center shall be so taken or conveyed that, in Landlord's judgment, reasonable means of ingress and egress for the continued operation of the Shopping Center shall not be available for use by patrons of the Shopping Center, then, in any such event, Landlord may terminate this Lease by notice to Tenant within 30 days after the surrender of possession to the authority and this Lease shall terminate as of the date possession is taken as if such date were the Expiration Date and the Fixed Minimum Rent and Additional Rent shall be apportioned as of such date of sooner termination and any prepaid portion of Fixed Minimum Rent and Additional Rent for any period after such date shall be refunded by Landlord to Tenant.

reasonabl

reasonabl

1

F. In the event of a condemnation or taking for a temporary use or occupancy of all or any part of the Demised Premises for any public or quasi-public use or purpose during the Lease Term, this Lease shall be and remain unaffected by such condemnation or taking and Tenant shall continue responsible for all of its obligations hereunder and it shall continue to pay the Fixed Minimum Rent and Additional Rent in full. In the event of any such condemnation or taking, Tenant shall be entitled to appear, claim, prove and receive the entire award unless the period of temporary use or occupancy extends beyond the Expiration Date, in which event Landlord shall be entitled to appear, claim, prove and receive the entire award as represents the cost of restoration of the Demised Premises and the portion of any

such award allocable to the period following the Expiration Date. At the termination of such public or quasi-public occupancy prior to the Expiration Date, Tenant will, at its own expense, restore the Demised Premises as nearly as possible to the condition in which they were prior to the condemnation or taking. Notwithstanding the preceding provisions of this Subsection, any lump sum award received by Tenant as compensation for temporary use and occupancy of the Demised Premises shall be delivered forthwith to Landlord to be held by Landlord in trust for the payment of future installments of Fixed Minimum Rent and Additional Rent by Tenant as provided in this Lease.

G. All compensation awarded for any taking or conveyance pursuant to this Section, other than a taking pursuant to Subsection F of this Section, whether for all or any part of the Demised Premises or the Shopping Center, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of the leasehold or the fee of the Demised Premises, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation. Tenant shall be entitled to claim, prove and receive in the condemnation proceeding such awards as may be allowed for trade fixtures and depreciation or injury to and cost of removal of stock in trade, but only if such awards shall be made by the condemnation court in addition to, and shall not result in a reduction of, the award made by it for the land and buildings so taken. 2

Article X. Defaults and Remedies

Section 10.1. *Bankruptcy.* A. If a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the property of Tenant or Guarantor, if any, shall be filed against

1 (provided Landlord has cancelled all other leases of space in the Building)

2 Nothing herein shall be deemed to prohibit Tenant from making a claim for the unamortized amount, if any, of its leasehold improvements in an independent proceeding brought by Tenant; provided, however, that such claim shall not result in a reduction in the award made to Landlord for such land and buildings taken.

Tenant or Guarantor, if any, in any court, pursuant to any statute either of the United States or of any state, and if, within 30 days thereafter, Tenant or Guarantor, if any, fails to secure a discharge thereof, or if Tenant or Guarantor, if any, shall voluntarily file any such petition or make an assignment for the benefit of creditors or petition for or enter into an arrangement, this Lease, at the option of Landlord, may be cancelled and terminated, in which event neither Tenant nor any person claiming through or under Tenant by virtue of any statute or of an order of any court shall be entitled to acquire or remain in possession of the Demised Premises, Landlord shall have no further liability hereunder to Tenant or any person claiming through or under Tenant, and if Tenant or any such person is in possession, Tenant or any such person shall forthwith quit and surrender the Demised Premises to Landlord. If this Lease shall be so cancelled or terminated, Landlord, in addition to the other rights and remedies of Landlord under any other provision of this Lease or under any statute or rule of law, may retain as liquidated damages any Fixed Minimum Rent, Additional Rent, Security Deposit or moneys received by Landlord from Tenant or others on behalf of Tenant.

B. In the event of the termination of this Lease pursuant to Subsection A of this Section, Landlord shall forthwith, notwithstanding any other provision of this Lease to the contrary, be entitled to recover from Tenant as and for liquidated damages a sum equal to the amount by which the Fixed Minimum Rent and Additional Rent payable hereunder for the period which otherwise would have constituted the unexpired portion of the Lease Term (conclusively presuming the Percentage Rent to be the same as the average as was payable for the three preceding Lease Years and conclusively presuming the Tax Rent, Common Area Charges, Utility Charge and Merchants' Association dues to be the same as were payable for the Lease Year immediately preceding such termination) exceeds the then rental value of the Demised Premises for the same period, both discounted at the rate of 4% per annum to present worth. If the Demised Premises or any part thereof be relet by Landlord for the unexpired portion of the Lease Term, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or

tribunal, the amount of rent reserved upon such reletting shall be deemed *prima facie* to be the fair and reasonable rental value for the part or the whole of the Demised Premises so relet during the term of the reletting. Nothing herein contained shall limit or prejudice the right of Landlord to prove for and obtain as damages by reason of such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater or less than the amount of liquidated damages referred to above.

SECTION 10.2. *Default.* A. This Lease and the term and estate hereby granted are subject to the limitation that:

(i) if Tenant shall default in the payment when due of any installment of Fixed Minimum Rent or in the payment when due of any Additional Rent, and such default shall continue for a period of ~~3~~ 7 days after notice; or

(ii) if Tenant shall default in the observance or performance of any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the covenants for the payment of Fixed Minimum Rent and Additional Rent) and Tenant shall fail to remedy such default within ~~10~~ 20 days after notice by Landlord to Tenant of such default, or if such default is of such a nature that it cannot be completely remedied within said period of ~~10~~ 20 days if Tenant (a) shall not within ~~10~~ 20 days after the giving of such notice, advise Landlord in writing of Tenant's intention duly to institute all steps necessary to remedy such situation, (b) shall not within ~~10~~ 20 days institute and thereafter diligently prosecute to completion all steps necessary to remedy the same, and

INITIAL HERE

(c) shall not remedy the same within a reasonable time after the date of the giving of said notice by Landlord; or

(iii) if the Demised Premises shall become vacant, deserted or abandoned for a period of 10 consecutive days; or

~~(iv) if Tenant shall default in the observance or performance of any term,~~ covenant or condition on Tenant's part to be ~~observed or performed~~ under any other lease with Landlord ~~and such~~ default shall continue beyond any grace ~~period set forth in such other lease for the remedying of such default,~~

then in any of said events Landlord may give to Tenant notice of intention to end the Lease Term at the expiration of three days from the date of the giving of such notice, and, in the event such notice is given, this Lease and the term and estate hereby granted (whether or not the Lease Term shall have commenced) shall terminate upon the expiration of said three days with the same effect as if that day were the Expiration Date, and Tenant shall then quit and surrender the Demised Premises to Landlord but Tenant shall remain liable as hereinafter set forth, provided, however, that if Tenant shall default (i) in the timely payment of Fixed Minimum Rent or Additional Rent or in the timely reporting of Gross Sales as required by Section 4.3, or any of them, and any such default shall continue for two or more consecutive months or be repeated on two successive occasions or more or for a total of four months in any period of twelve months, or (ii) in performance of any other term, covenant or condition of this Lease more than three times in any period of six months, then, notwithstanding that such defaults shall have each been cured by Tenant within the period after notice as above provided or by Landlord pursuant to Section 10.6, any further similar default shall be deemed to be deliberate and Landlord thereafter may serve the said written three days' notice of termination without affording to Tenant an opportunity to cure such further default.

B. If the notice provided for in Subsection A of this Section shall have been given and this Lease shall be terminated, or if any execution or attachment shall be issued

against Tenant or any of Tenant's property; or if Tenant shall fail to open for business on the Commencement Date, of which fact Landlord shall be the sole judge; then, in any of such events, Landlord may, without notice, terminate all services, re-enter the Demised Premises either by force or otherwise, and by summary proceedings or otherwise, dispossess Tenant and the legal representative of Tenant or other occupant of the Demised Premises, and remove their effects and hold the Demised Premises as if this Lease had not been made.

C. Nothing in Subsection A of this Section shall be deemed to require Landlord to give the notices therein provided for prior to the commencement of a summary proceeding for non-payment of rent or a plenary action for the recovery of rent on account of any default in the payment of Fixed Minimum Rent or Additional Rent, it being intended that such notices are for the sole purpose of creating a conditional limitation hereunder pursuant to which this Lease shall terminate and Tenant shall become a holdover tenant.

SECTION 10.3. *Remedies of Landlord.* A. If this Lease and the Lease Term shall terminate as provided in Section 10.1 or Section 10.2, or by or under any summary proceeding or any other action or proceeding, then, in any of said events:

(i) Tenant shall pay to Landlord all Fixed Minimum Rent and Additional Rent to the date upon which this Lease and the Lease Term shall have terminated or to the date of re-entry upon the Demised Premises by Landlord, as the case may be;

(ii) Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as Fixed Minimum Rent, Additional Rent, Security Deposit or otherwise, but such monies shall be credited by Landlord against any Fixed Minimum Rent or Additional Rent due at the time of such termination or re-entry or, at Landlord's option, against any damages payable by Tenant;

INITIALS HER:

Trial Exhibit 15

(iii) Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency between the Fixed Minimum Rent and Additional Rent payable hereunder for the period which otherwise would have constituted the unexpired portion of the Lease Term (conclusively presuming the Percentage Rent to be the same as the average as was payable for the three preceding Lease Years and conclusively presuming the Tax Rent, Common Area Charges, Utility Charge and Merchants Association dues to be the same as were payable for the year immediately preceding such termination or re-entry) and the net amount, if any, of rents ("Net Rent") collected under any reletting for any part of such period (first deducting from the rents collected under any such reletting all of Landlord's expenses in connection with the termination of this Lease or Landlord's re-entry upon the Demised Premises and in connection with such reletting including all repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and other expenses of preparing the Demised Premises for such reletting);

(iv) Any such deficiency shall be paid in monthly installments by Tenant on the days specified in this Lease for the payment of installments of Fixed Minimum Rent. Landlord shall be entitled to recover from Tenant each monthly deficiency as the same shall arise and no suit to collect the amount of the deficiency for any month shall prejudice Landlord's right to collect the deficiency for any subsequent month by a similar proceeding. Alternatively, suit or suits for the recovery of such deficiencies may be brought by Landlord from time to time at its election; 1

(v) Whether or not Landlord shall have collected any monthly deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay Landlord, on demand, as and for liquidated and agreed final damages, a sum determined pursuant to Subsection B of Section 10.1;

(vi) (a) In no event shall Tenant be entitled to receive any excess of such Net Rent over the sums payable by Tenant to Landlord hereunder, (b) in no event shall Tenant be entitled in any suit for the collection of damages pursuant to

this Section to a credit in respect of any Net Rent from a reletting except to the extent that such Net Rent is actually received by Landlord prior to the commencement of such suit, and (c) if the Demised Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot area basis shall be made of the rent received from such reletting and of the expenses of reletting;

(vii) Landlord and Landlord's agents may immediately re-enter the Demised Premises or any part thereof, without notice, either by summary proceedings or by any other applicable action or proceeding, or by force or otherwise (without being liable to indictment, prosecution or damages therefor), and may repossess the Demised Premises and dispossess Tenant and any other persons from the Demised Premises and remove any and all of its or their property and effects from the Demised Premises and in no event shall re-entry be deemed an acceptance of surrender of this Lease; and

(viii) Landlord, at Landlord's option, may relet the whole or any part or parts of the Demised Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for such term or terms ending before, on or after the Expiration Date, at such rental or rentals and upon such other conditions, which may include concessions and free rent periods, as Landlord, in its sole discretion, may determine. Landlord shall have no obligation to relet the Demised Premises or any part thereof and shall in no event be liable for refusal or failure to relet the Demised Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon any such reletting, and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise to affect any such

INITIAL HERE

1 Nothing herein contained shall be construed as preventing Tenant from prosecuting any alleged claim against Landlord in a separate action or proceeding. If Tenant is successful in such separate action or proceeding, Landlord shall pay Tenant's reasonable attorneys' fees therein.

liability; Landlord, at Landlord's option, may make such repairs, replacements, alterations, additions, improvements, decorations and other physical changes in and to the Demised Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

B. In the event of any breach or threatened breach by Tenant or any persons claiming through or under Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as if re-entry, summary proceedings or other specific remedies were not provided for in this Lease.

C. Tenant, on its own behalf and on behalf of all persons claiming through or under Tenant, including all creditors, does hereby waive any and all rights and privileges, so far as is permitted by law, which Tenant and all such persons might otherwise have under any present or future law, to (i) the service of any notice of intention to re-enter or to institute legal proceedings to that end, (ii) redeem the Demised Premises, (iii) re-enter or repossess the Demised Premises, or (iv) restore the operation of this Lease, after Tenant shall have been dispossessed by a judgment or by warrant of any court or judge, or after any re-entry by Landlord, or after any expiration or termination of this Lease and the Lease Term, whether such dispossess, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

SECTION 10.4. *Waiver of Trial by Jury; Tenant Not to Counterclaim.* Landlord and Tenant shall and hereby do waive trial by jury in any action, proceeding or

counterclaim brought by either of the parties hereto against the other in any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Demised Premises, the Common Areas or any part of the Shopping Center, any claim of injury or damage, and any emergency statutory or any other statutory remedy. Tenant shall not interpose any counterclaim or counterclaims in a summary proceeding or in any action based on non-payment by Tenant of Fixed Minimum Rent or Additional Rent.

SECTION 10.5. *Holdover by Tenant.* In the event Tenant remains in possession of the Demised Premises after the Expiration Date, and without the execution of a new lease, Tenant, at the option of Landlord, shall be deemed to be occupying the Demised Premises as a tenant from month to month, at a monthly rental equal to twice the sum of (i) the monthly installment of Fixed Minimum Rent payable during the last month of the Lease Term, (ii) 1/12 of the average annual Percentage Rent payable hereunder for the last three Lease Years of the Lease Term, (iii) the Tax Rent payable for the last month of the Lease Term, (iv) the Tenant's Proportionate Share of the Common Area Charges payable for the last month of the Lease Term, and (v) the Utility Charge payable for the last month of the Lease Term, subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

SECTION 10.6. *Landlord's Right to Cure Defaults.* Landlord may, but shall not be obligated to, cure, at any time, upon ~~ten (10)~~ days' notice to Tenant, or in twenty (20 the event of an emergency, without notice to Tenant, any default by Tenant under this Lease; and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing a default, including, without limitation, reasonable attorneys' fees and disbursements together with Interest on the amount of costs and expenses so incurred, shall be paid by Tenant to Landlord on demand, and shall be recoverable as Additional Rent.

INITIAL HERE

SECTION 10.7. *Effect of Waivers of Default.* No consent or waiver, express or implied, by Landlord to or of any breach of any term, covenant or condition of this Lease on the part of Tenant shall be construed as a consent or waiver to or of any other breach of the same or any other term, covenant or condition, unless in writing signed by Landlord. The failure of Landlord to insist in any one or more instances upon the strict performance of any one or more of the agreements, terms, covenants, conditions or obligations of this Lease, or to exercise any right, remedy or election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission whether of a similar nature or otherwise. No executory agreement hereafter made between Landlord and Tenant shall be effective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing, refers expressly to this Lease, is signed by the party against whom enforcement of the change, modification, waiver, release, discharge or termination or effectuation of the abandonment is sought and is permissible under any existing ground, overriding or underlying lease, the Operating Agreement and all fee or leasehold mortgages or deeds of trust affecting the Shopping Center or any part thereof.

SECTION 10.8. *Security Deposit.* Tenant has deposited with Landlord the Security Deposit as security for the faithful performance and observance by Tenant of the terms, covenants and conditions of this Lease. In the event Tenant defaults in the performance and observance of any of the terms, covenants and conditions of this Lease, including the payment of Fixed Minimum Rent and Additional Rent, Landlord may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any Fixed Minimum Rent and Additional Rent or any other sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including any damages or deficiency in the reletting of the Demised Premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord. In the case of every such use, application or retention of any such sum Tenant shall, on demand, pay to Landlord the sum so used, applied or retained which shall be added to the Security Deposit so that the same shall be restored to its original amount. In the event that Tenant shall fully and faithfully comply with all of the terms, covenants and conditions of this Lease, the Security Deposit shall be returned to Tenant after the Expiration Date and after delivery of exclusive possession of the Demised Premises to Landlord. In the event of a sale or leasing of the Shopping Center or any part thereof which includes the Demised Premises, Landlord shall have the right to transfer the Security Deposit to the vendee or lessee and Landlord shall *ipso facto* be released by Tenant from all liability for the return of such Security Deposit, and Tenant agrees to look solely to the new landlord for the return of the Security Deposit. The provisions hereof shall apply to every transfer or assignment made of the Security Deposit to a new landlord. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the moneys deposited as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

ARTICLE XI. MISCELLANEOUS PROVISIONS

SECTION 11.1. *Notices From One Party to the Other.* A. Except as otherwise expressly provided in this Lease, any bills, statements, notices, demands, requests, consents or other communications given or required to be given under this Lease shall be effective only if rendered or given in writing and

(i) if to Tenant, sent by mail, postage prepaid, to the Address of Tenant or to such other address as Tenant may designate as its new address for such purpose by notice given to Landlord in accordance with the provisions of this Section, or delivered personally to Tenant, 1

(ii) if to Landlord, sent by registered or certified mail, return receipt requested, postage prepaid, to the Address of Landlord together with a copy to such other person or persons as Landlord may designate and to such other address or addresses as Landlord may designate as its new address for such purpose by notice given to Tenant in accordance with the provisions of this Section.

B. Any such bill, statement, notice, demand, request, consent or other communication shall be deemed to have been rendered or given on the date mailed, if mailed to Landlord or Tenant as provided in this Section, unless mailed outside of the State of New York, in which case it shall be deemed to have been given, rendered or made on the expiration of 3 business days after mailing.

SECTION 11.2. *Brokerage.* Tenant represents that it has had no dealings with any broker or agent in connection with this Lease other than Feist & Feist and covenants to hold harmless and indemnify Landlord from and against any and all losses, damages and expenses, including, without limitation, court costs and attorneys' fees and disbursements, arising out of any claims by any other broker or agent with respect to this Lease or the negotiation hereof.

SECTION 11.3. *Control of Tenant.* If Tenant is a corporation or partnership and if at any time during the Lease Term the person(s) who, at the time of the execution of this Lease, own(s) a majority of such corporation's voting shares or the general partners' interests in such partnership, as the case may be, cease(s) to own a majority of such shares or general partners' interests, as the case may be (except as the result of transfers by bequest or inheritance), Tenant shall so notify Landlord and Landlord may terminate this Lease by notice to Tenant given within 90 days

thereafter or within 90 days after Landlord shall have received other notice thereof. This Section shall not apply whenever Tenant is a corporation the outstanding voting stock of which is listed on a recognized security exchange. For the purposes of this Section, stock ownership shall be determined in accordance with the principles set forth in Section 544 of the Internal Revenue Code of 1954 as the same existed on August 16, 1954, and the term "voting stock" shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation. 2

SECTION 11.4. *Relationship of the Parties.* Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Fixed Minimum Rent or Additional Rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. Whenever herein the singular number is used, the same shall include the plural, and the neuter gender shall include the masculine and feminine genders.

SECTION 11.5. *Estoppel Certificates.* Each of the parties agrees that it will, at any time and from time to time, within ~~10~~ business days following written notice 20 by the other party hereto specifying that it is given pursuant to this Section, execute, acknowledge and deliver to the party who gave such notice a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Fixed Minimum Rent and Additional Rent and any other payments due hereunder from Tenant have been paid and stating whether or not to the best of the knowledge of the signer of such certificate the other party is in default in performance of any term, covenant or con-

1 (with a copy to such other person as Tenant may designate)
2 This Section 11.3 shall not be applicable to the Guarantor nor shall it be applicable to any assignment permitted to be made by Tenant without Landlord's consent in accordance with this Lease.

dition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge. The failure of either party to execute, acknowledge and deliver to the other a statement in accordance with this Section within said 10 business day period shall constitute an acknowledgment, by the party given such notice, which may be relied on by any person holding or proposing to acquire an interest in the Shopping Center or the Demised Premises or this Lease from or through the other party or by any mortgagee or prospective mortgagee thereof or by a prospective assignee of any mortgage thereof, that this Lease is unmodified and in full force and effect and that the Fixed Minimum Rent and Additional Rent have been duly and fully paid to and including the respective due dates immediately preceding the date of such notice and shall constitute, as to any person entitled as aforesaid to rely upon such statements, a waiver of any defaults which may exist prior to the date of such notice.

SECTION 11.6. *Applicable Law and Construction.* The laws of the State of New York shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. The submission of this document for examination does not constitute an offer to lease, or a reservation of or option for the Demised Premises, and becomes effective only upon execution and delivery thereof by Landlord and Tenant. All negotiations, considerations, representations and understandings between the parties are incorporated in this Lease. The table of contents preceding this Lease and the headings of the several Articles and Sections contained herein are for convenience only and do not define or limit the contents of such Articles or Sections, and should not be given any effect in construing this Lease.

SECTION 11.7. *Cancellation.* ~~If, by March 1, 1976, Landlord shall not have~~ commenced the erection of the frame (whether ~~steel or concrete~~) for the Building, Landlord may cancel ~~this Lease at~~ any time during the period of 90 days after ~~such date by written notice to Tenant~~. If Landlord shall be unable to deliver the
1 Demised Premises ready for Tenant's Work by ~~March 1, 1978~~ (as such date may be extended as the result of Unavoidable Delays or as the result of any delay caused by Tenant), this Lease shall cease and be deemed cancelled as of that date (as so extended) as if such date were the Expiration Date. Upon any such termination, this Lease shall be of no further force or effect and neither party shall have any right or claim hereunder against the other, except that Landlord shall be required to return to Tenant, the Security Deposit, the first monthly installment of Fixed Minimum Rent and any payment made pursuant to Subsection P of Section 8.1.

SECTION 11.8. *Short Form Lease.* Tenant agrees not to record this Lease or the statement executed pursuant to Section 2.3. Tenant shall, at the request of Landlord, execute, acknowledge and deliver, at any time after the date of this Lease, a memorandum of lease prepared by Landlord pursuant to Section 291-c of the Real Property Law, but the provisions of this Lease shall control the rights and obligations of the parties.

SECTION 11.9. *Binding Effect of Lease.* The terms, covenants and conditions herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns. Each term, covenant and condition herein contained shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, not dependent on any other provision of this Lease unless otherwise expressly provided.

SECTION 11.10. *Financing.* If at any time a lender with which Landlord has negotiated or may negotiate interim or long-term financing (including, without limitation, sale-leaseback or mortgage) for the Shopping Center ~~does not approve or disapproves the financial and credit rating of Tenant for purposes of such financ-~~

1 August 1, 1974

INITIAL HERE

ing, or if any such lender shall require or request a change or changes in this Lease; and if within 30 days after notice from Landlord (i) Tenant fails or refuses to supply or execute assurances and/or guarantees which Landlord certifies are required or requested by such lender to secure such lender's approval of Tenant's financial and credit rating, or (ii) if Tenant fails or refuses to execute an amendment or amendments to this Lease incorporating the change or changes which Landlord certifies are required or requested by such lender to secure such lender's approval of this Lease, then Landlord may give Tenant 10 days notice of its intention to terminate this Lease and at the expiration of the 10 day period this Lease shall terminate as if such date were the Expiration Date. If for any reason other than 1
Landlord's wilful default such financing in an amount satisfactory to Landlord cannot be obtained, Landlord shall have the right to terminate this Lease at any time, upon 5 days notice to Tenant, prior to the time for the commencement of Tenant's Work pursuant to Section 3.3 hereof and at the expiration of the 5 day period this Lease shall terminate as if such date were the Expiration Date. 2

SECTION 11.11. *Definitions.* For the purposes of this Lease and all agreements supplemental to this Lease, unless the context otherwise requires, the following terms shall have the meanings set forth below:

A. *Additional Rent:* as defined in Section 4.1B.

B. *Affiliate:* Any person who controls, is controlled by, or is under common control with the person in question or is controlled by the same persons who shall then control the person in question and any person who is a member with the person in question in a relationship of joint venture (other than the joint venture between the parties herein named as Landlord), partnership or other form of business association concerning or which in any way affects the subject matter involved. The term "control" shall be deemed to mean ownership of not less than 25% of the total voting stock of a corporation or not less than 25% of all of the legal or equitable interest in any other business entities.

Trial Exhibit 15

C. *Common Areas:* as defined in Section 5.1.

D. *Common Area Charges:* as defined in Section 5.3.

E. *Covered Mall:* The portions of the Shopping Center which are shown by cross hatching on Exhibit A and which consist of two levels to be known as the "Lower Mall" and the "Upper Mall," together with the roofs, the floors, the exterior walls and the demising walls in the buildings marked as A, B, C and D on Exhibit A.

F. *Days for Completion of Tenant's Work:* as defined in Section 1.1.

G. *Demised Premises:* as defined in Section 1.1 and Section 2.1 and as shown on the Exhibits referred to therein.

H. *Department Store:* A retail store of at least 60,000 square feet of Floor Space as originally constructed containing a number of departments for the sale of hard and soft goods and carrying a general line of apparel, such as suits, coats, dresses and other garments, whether ready to wear and/or custom, and house furnishings, fittings and appliances, such as curtains, draperies, linens, household appliances and housewares, whether or not such lines (or full lines thereof) as household furniture, floor coverings and major appliances are also carried.

I. *Department Store Parcels:* The portions of the Shopping Center each indicated by the words "Department Store" on Exhibit A.

J. *Fixed Minimum Rent:* as defined in Section 1.1.

K. *Floor Space:* The actual number of square feet of floor space in the Demised Premises or in other leased or occupied space in the Shopping Center within the exterior faces of the perimeter walls or parts thereof (except that

1 ; provided, however, that Tenant shall not be required to consent to any modification of any of the Fundamental Lease Provisions or to any other change which would materially adversely affect Tenant.

2 ; provided that all other leases of retail space in the Covered Mall are so terminated.

the center of the wall shall be used where such wall separates leased or occupied space or space available for occupancy) enclosing the Demised Premises or any leased or occupied space in the Shopping Center. If the Demised Premises are not surrounded by walls, then the space within and up to the line of the Demised Premises shown on Exhibit B shall be included in the computation of Floor Space. For the purpose of this definition store fronts shall not be deemed to be walls. No deduction or exclusion shall be made from Floor Space by reason of stairs, elevators, escalators, interior partitions or other interior construction or equipment.

L. *Gross Sales:* as defined in Section 4.3B.

M. *Guarantor:* The person or persons executing the guaranty attached to this Lease.

N. *Landlord:* The party named as "Landlord" in Section 1.1 until a sale, transfer or lease by it, and thereafter the person or persons, collectively, who shall, for the time being, be liable for the obligations of Landlord under the provisions of Section 7.3.

O. *Landlord's Work:* The work and installations to be performed by Landlord prior to the Commencement Date as provided in Section 3.1 and Exhibit C.

P. *Lease Term:* as defined in Section 1.1.

Q. *Lease Year:* as defined in Section 4.4.

R. *Percentage Rent:* as defined in Section 4.3.

S. *Percentage Rent Periods:* as defined in Section 1.1.

T. *Percentage Rent Rate:* as defined in Section 1.1.

U. *Permitted Uses:* as defined in Section 1.1.

V. *Person:* A natural person, firm, association, partnership, corporation or other entity, as the case may be.

W. *Shopping Center:* The parcel(s) of land shown on Exhibit A situated in the Borough of Staten Island, County of Richmond, City and State of New York, including the Department Store Parcels, plus (i) any other parcel(s) of land at any time designated by Landlord to be added thereto (but only so long as any such designation remains unrevoked) which are, or are to be, used for Shopping Center or related purposes, including, but not limited to, access to and from any public street, employee parking, or the furnishing to the Shopping Center of any utility or other service, or for any other improvement appropriate or related to the operation or functioning of the Shopping Center; together with (ii) all buildings on and improvements to any such parcel(s) of land. The term "Shopping Center" also means, when used not solely to designate the geographical location thereof, the operation and functioning thereof primarily as a general shopping center for the sale of goods, wares, merchandise, food, beverages and services at retail, together with such services and facilities as are incident to or advisable in connection with the operation thereof, including, but not limited to, medical, dental and other service uses and offices. No road, way, street, easement, utility, or facility otherwise included within the Shopping Center shall be deemed for any purpose to be partially or wholly excluded therefrom by reason of the fact that the same may also serve or be used by the occupant of any other premises or the customers thereof. Any portion of the Shopping Center which is condemned or taken by eminent domain or dedicated to public use or ceded or conveyed to any governmental authority for street or related purposes shall be thereupon excluded from the Shopping Center to the extent of the taking. The parcels of land specified in Subsection C of Section 4.5 may, at Landlord's option, be excluded from the Shopping Center, except that with respect to any such parcel the negative

covenants contained in Section 8.2 shall continue to apply. Landlord contemplates, but does not warrant, that an office building and other non-retail structures will be constructed on part of the Shopping Center. Tenants of the office building and other non-retail or service tenants, other than tenants of retail space on the upper or lower Mall, may not, at Landlord's option, be obligated to pay any portion of the Common Area Charges or to join the Merchants' Association.

X. *Taxes:* as defined in Section 4.5A and C.

Y. *Tax Rent:* as defined in Section 4.5B.

Z. *Tenant:* as defined in Section 1.1. Wherever this Lease refers to Tenant's agents and/or servants, such term shall be deemed to refer to Tenant and Tenant's concessionnaires, and their respective officers, agents, servants, employees and contractors.

AA. *Tenant's Proportionate Share of Common Area Charges:* as defined in Section 5.3.

BB. *Tenant's Trade Name:* as defined in Section 1.1.

CC. *Tenant's Work:* The work and installations to be performed by Tenant prior to the Commencement Date as provided in Section 3.2 and Exhibit C.

DD. *Utility Charge:* as defined in Section 6.2.

SECTION 11.12. *Construction on Adjacent Premises.* If any excavation or other building operation shall be authorized or undertaken on any premises adjoining or above or below the Demised Premises or on any other premises in the Shopping Center, Tenant shall permit Landlord, or the adjoining owner, and their respective agents, employees, licensees and contractors, to enter the Demised Premises and to shore the foundations and/or walls thereof, and to erect scaffolding and/or protective barricades around and about the Demised Premises (but not so as to preclude

entry thereto) and to do any act or thing necessary for the safety or preservation of the Demised Premises. Tenant's obligations under this Lease shall not be affected by any such construction or excavation work, shoring-up, scaffolding or barricading. Landlord shall not be liable in any such case for any inconvenience, disturbance, loss of business or any other annoyance arising from any such construction, excavation, shoring-up, scaffolding or barricades, but Landlord shall use its best efforts to assure that such work will cause as little inconvenience, annoyance and disturbance to Tenant as possible consistent with accepted construction practice in the vicinity and to assure that such work shall be expeditiously completed. [1]

SECTION 11.13. *Effect of Unavoidable Delays.* The term "Unavoidable Delays" shall be deemed to mean any (a) strike(s), lockout(s) or labor dispute(s); (b) inability to obtain labor or materials, or reasonable substitutes therefor; or (c) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, riot or insurrection, fire or other unavoidable casualty, [2] or other conditions similar or dissimilar to those enumerated in this item (c) beyond the reasonable control of the party obligated to perform. If Landlord or Tenant shall, as the result of any Unavoidable Delay fail punctually to perform any obligation on its part to be performed under this Lease, then such failure shall be excused and not be a breach of this Lease by the party in question, but only to the extent occasioned by an Unavoidable Delay. If any right or option of either party to take any action under or with respect to this Lease is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time and such named date shall be deemed to be extended or delayed, as the case may be, for a period equal to the period of the delay occasioned by any Unavoidable Delay. Notwithstanding anything herein contained, however, (i) the provisions of this Section shall not be applicable to Tenant's obligation to pay Fixed Minimum Rent and Additional Rent under the provisions

1 See Rider

2 and Landlord's causing Tenant's contractors, mechanics or laborers to leave the Shopping Center to avoid a labor problem provided that (i) Landlord has first approved such contractors, mechanics or laborers, and (ii) such contractor(s), mechanic(s) or laborer(s) belong(s) to the appropriate union having jurisdiction at site of the Shopping Center

of Article IV or its obligations to pay any other sums, moneys, costs, charges or expenses required to be paid by Tenant hereunder, and (ii) with respect to Tenant's obligations under the provisions of Section 8.1C only the events described in item (c) of the first sentence of this Section shall be deemed to be applicable for the purpose of this Section.

SECTION 11.14. *No Oral Changes.* This Lease may not be changed or terminated orally, but only by an agreement in writing signed by the parties hereto.

SECTION 11.15. *No Representations by Landlord.* Landlord or Landlord's Agents have made no representations, warranties or promises with respect to the Demised Premises or the Building except as herein expressly set forth.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto executed this Lease as of the day and year first above written.

STATEN ISLAND MALL (Landlord)

By: BLACKFRIARS REALTY CORP.
(a Joint Venturer)

By: John A. Feist
John A. Feist
Vice President

Attest:

Assistant Secretary
Lawrence D. Eisenberg

[SEAL]

MAGNALEASING, INC.

(Tenant)

By: John Kelly
Vice Pres.

Attest:

Assistant Secretary

[SEAL]

Magnaleasing

Trial Exhibit 15

(Acknowledgment for Corporate Tenant)

STATE OF Indiana
COUNTY OF Allen } ss.:

On the 26 day of April, 197 3, before me personally came John F. Kelly, to me known, who, being by me duly sworn, did depose and say that he resides at Fort Wayne Indiana; that he is the Vice President of Magnaleasing, Inc., the corporation described in and which executed the foregoing instrument as Tenant; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of such corporation, and that he signed his name thereto by like order.

My commission expires 5/29/74

Mabel M Moser
Notary Public

(Acknowledgment for Individual Tenant)

STATE OF
COUNTY OF } ss.:

On the day of , 197 , before me personally came , to me known and known to me to be the individual described in and who executed the foregoing instrument as Tenant, and acknowledged to me that he executed the same.

Notary Public

Trial Exhibit 15

(Acknowledgment for Partnership Tenant)

STATE OF
COUNTY OF } ss.:

On the day of , 197 , before me personally came , to me known, who, being by me duly sworn, did depose and say that he is a partner in the firm of , a partnership, and that he executed the foregoing instrument as Tenant on behalf of said firm.

Notary Public

Trial Exhibit 15

GUARANTY

In consideration of, and as an inducement for the granting, execution and delivery of the foregoing lease, dated May 4, 1973 ("Lease"), by STATEN ISLAND MALL, Landlord therein named ("Landlord") to Magnaleasing, Inc. Tenant therein named ("Tenant"), and in further consideration of the sum of One ($1.00) Dollar and other good and valuable consideration paid by Landlord to the undersigned, the receipt and sufficiency of which are hereby acknowledged, the undersigned, The Magnavox Company ("Guarantor"), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of Fixed Minimum Rent and Additional Rent payable by Tenant, its successors and assigns, under the Lease, and hereby further guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant, its successors and assigns; and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant, its successors or assigns, in the payment of any Fixed Minimum Rent or Additional Rent, or if Tenant should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in the Lease, Guarantor shall and will forthwith pay Fixed Minimum Rent and Additional Rent, to Landlord, its successors and assigns, and any arrears thereof, and shall and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant, its successors or assigns, under the Lease, including without limitation, all reasonable attorneys' fees, and disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guaranty of payment and of performance. It shall be enforceable against Guarantor, its successors and assigns,

Trial Exhibit 15

without the necessity of any suit or proceedings on Landlord's part of any kind or nature whatsoever against Tenant, its successors and assigns, ~~and without~~ the necessity of any notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against Tenant, or against Tenant's successors or assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease.

This Guaranty shall be a continuing guaranty, and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease by Landlord and Tenant, or by reason of any extension of time that may be granted by Landlord to Tenant, its successors or assigns, or by reason of any dealings or transactions or matter or thing occurring between Landlord and Tenant, its successors or assigns, or by reason of any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Tenant, ~~whether or not notice thereof or of any thereof is given to Guarantor~~.

1

All of Landlord's rights and remedies under the Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right or remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

1 provided that notice thereof is given to Guarantor

INITIAL HERE

Trial Exhibit 15

As a further inducement to Landlord to make and enter into the Lease and in consideration thereof, Landlord and Guarantor covenant and agree that in any action or proceeding brought on, under or by virtue of this Guaranty, Landlord and Guarantor shall and do hereby waive trial by jury. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York.

Dated: May 4, 1973

THE MAGNAVOX COMPANY

Vice President

Attest:

Assistant Secretary

INITIAL HERE

Trial Exhibit 15

(Acknowledgment for Individual Guarantor)

STATE OF
COUNTY OF } ss.:

On this day of , 197 , before me personally came , to me known and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged that he executed the same.

(Acknowledgment for Corporate Guarantor)

STATE OF Indiana
COUNTY OF Allen } ss.:

On this 26 day of April , 1973 , before me personally came D. J. Meinhart , to me known, who, being by me duly sworn, did depose and say that he resides at Southport Connecticut ; that he is the of The Magnavox Company , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

My commission expires 5/29/74 Mabel R. Moss
Notary Public

Trial Exhibit 15

(Acknowledgment for Partnership Guarantor)

STATE OF
COUNTY OF } ss.:

On this day of , 197 , before me personally came , to me known, who, being by me duly sworn, did depose and say that he is a partner in the firm of , a partnership, and that he executed the foregoing instrument on behalf of said firm.

Notary Public

Trial Exhibit 15

RIDER ATTACHED TO AND MADE A PART OF LEASE DATED May 4, 1973 BETWEEN STATEN ISLAND MALL, AS LANDLORD, AND MAGNALEASING, INC., AS TENANT

The clauses contained in this Rider shall supersede any inconsistent provisions contained elsewhere in this Lease.

1. The Fundamental Lease Provision, Landlord's Contribution for Tenant's Work, as set forth in Section 1.1 is amended to read as follows:

Landlord's Contribution for Tenant's Work:

$5.00 per square foot of Floor Space in the Demised Premises payable as follows:

(a) $2.00 per square foot of Floor Space in the Demised Premises in accordance with Section 3.8, and

(b) $3.00 per square foot of Floor Space in the Demised Premises by setting off such amount against the first payments of Percentage Rent, if any, due under

this Lease, provided, however, that (i) in any Lease Year, such set off shall not exceed one-half (1/2) of the Percentage Rent payable for such Lease Year and (ii) such set off shall in no event exceed a sum equal to the amount set forth in this paragraph 1(b) multiplied by the square feet of Floor Space in the Demised Premises. The amount of Landlord's Contribution for Tenant's Work set forth in this paragraph 1(b) shall be payable only to the extent that a set off may be available to Tenant pursuant to the terms of the preceding sentence.

2. The following is added to the end of Section 2.1:

Landlord shall not materially change the access from the Demised Premises to the Common Areas; provided, however, that

INITIAL HERE

nothing herein contained shall affect Landlord's right to locate selling or recreational areas in the Common Areas, including, but not limited to, sitting or play areas, customer convenience areas, exhibits, plantings, selling kiosks or other similar areas.

3. The following is added at the end of Section 2.2:

Notwithstanding anything to the contrary contained elsewhere in this Lease (whether in respect of Days for Completion of Tenant's Work, time periods permitted for the submission and approval of Plans, the time period allowed for the completion of Tenant's Work or otherwise), Landlord shall have the option of designating a date for the opening of the Covered Mall to the public, and if Landlord so elects, the Commencement Date shall be, and Tenant shall open the Demised Premises for business on such date; provided,

however, that (i) Landlord shall give Tenant at least 30 days notice of such date, (ii) such date shall not occur before August 1, 1973, (iii) if Tenant is unable to open the Demised Premises for business on such date because (a) Landlord delayed in notifying Tenant of its approval of, or objection to, any Plans as provided in Section 3.2 or (b) Landlord failed to complete Landlord's Work to an extent which would permit Tenant's Work to be commenced in accordance with Section 3.3 at least 75 days prior to August 1, 1973, then, in either of such events, the date August 1, 1973 prior to which Landlord may not elect to require Tenant to open the Demised Premises for business and have the Commencement Date occur pursuant to this Paragraph 3 as set forth in (ii) above shall be deemed extended for a period equal to the period of the delay caused by Landlord as set forth in (a) and (b) above and (iv) Tenant shall in no event be required

INITIAL HERE

to initially open the Demised Premises or commence the payment of Fixed Minimum Rent and Additional Rent until two Department Stores and retail stores (including the Demised Premises) having any aggregate Floor Space of 200,000 square feet or more shall have opened for business or are concurrently opening for business.

4. The following is added at the end of Section 3.3:

Notwithstanding any of the foregoing to the contrary, if, in Landlord's opinion, the performance by Tenant of any item or items of Tenant's Work involving the use or installation by or on behalf of Tenant of any pipes, ducts, wires or other conduits (a) may cause an interference with, or a delay to, another tenant in the Shopping Center in the performance of its work, in the opening of its store

or in the operation of its business or (b) cannot be performed by Tenant in time to complete Tenant's Work within the Days for Completion of Tenant's Work, then Landlord shall have the option, exercisable by notice to Tenant given prior to the time that Tenant commences such installation, to perform such item or items of Tenant's Work on behalf of Tenant in accordance with the criteria set forth in Exhibit C. In the event Landlord elects to perform any such item or items of Tenant's Work Tenant shall pay to Landlord, as Additional Rent, within 30 days after being billed therefor by Landlord, Landlord's reasonable cost of performing such work for Tenant. In the event Tenant fails to pay such amount when due, Landlord shall (without limiting any other rights of Landlord hereunder or at law for non-payment of rent) be entitled to retain and have recourse to any bond, letter of credit or escrow deposit provided by Tenant under Section 3.4.

INITIAL HERE

BEST COPY AVAILABLE

Trial Exhibit 15

5. The following is added at the end of Section 8.1C:

Tenant shall not be deemed to be in default under this Section 8.1C of the Lease in the event the Demised Premises shall be unoccupied due to the eviction or abandonment of Tenant's sublessee (provided that such subletting shall have been made in compliance with Section 8.2F of the Lease), so long as (i) Tenant shall use its best efforts to relet the Demised Premises to another sublessee as promptly as possible, (ii) Tenant shall continue to pay all Fixed Minimum Rent and Additional Rent as it comes due and (iii) Tenant shall continue to pay Percentage Rent as it becomes due based upon an average of Tenant's Gross Sales transacted during the three Lease Years prior to such eviction or abandonment (or lesser period of time if such eviction or

abandonment occurs during the first three Lease Years of the Lease Term) multiplied by a Percentage Rent Rate, in accordance with Section 4.3 of the Lease. At all times during the period in which the Demised Premises remains vacant due to eviction or abandonment of Tenant's sublessee, Landlord shall have the option to require a surrender of the Demised Premises and a termination of this Lease upon not less than ten (10) days notice to Tenant, which notice shall specify a date which shall be deemed to be the Expiration Date.

6. The following is added to the end of Section 8.1I:

To the extent not prohibited by or violative of any policy of fire or extended coverage insurance issued to Landlord, Landlord hereby waives any right to proceed against Tenant for damages arising out of Tenant's negligence, but only to the extent that the cost of repairing such damage is covered by collectible insurance.

INITIAL HERE

Trial Exhibit 15

7. The following is added to the end of Section 8.2F:

Tenant may assign this Lease or sublet the whole (but not less than the whole) of the Demised Premises as provided in and subject to the following conditions:

(a) Tenant is not in default in any of the terms, covenants, obligations, conditions and agreements of this Lease, including the payment of Fixed Minimum Rent and Additional Rent, at the time of such assignment or subletting, and on the date of the commencement of any such assignment or sublease;

(b) Tenant remains liable for the performance of all of the terms, covenants, obligations, conditions and agreements of this Lease;

(c) the assignee or subtenant assumes performance of all of the terms, covenants, obligations, conditions

and agreements of this Lease;

(d) the use to which the assignee or subtenant shall put the Demised Premises is not inconsistent with or contrary to any of the terms, covenants, obligations, conditions and agreements of this Lease, including but not limited to the Permitted Uses and Tenant's Trade Name as defined in Section 1.1;

(e) the assignee or subtenant shall have a net worth of $50,000 as indicated on a current certified financial statement, and shall have had not less than two years of management experience.

(f) an executed copy of the assignment and assumption agreement or subletting agreement, in form reasonably satisfactory to Landlord, is delivered to Landlord within 10 days after the execution thereof.

INITIAL HERE

Brick Church Appliance Company, 120 Central Avenue, Orange, New Jersey is hereby deemed approved by Landlord as a sublessee.

Upon an assignment of this Lease or a subletting of the Demised Premises pursuant to this Paragraph 7, Landlord and Tenant and the assignee or subtenant, upon demand of either of them, shall enter into a written agreement modifying this Lease (with respect to the name of Tenant, the Address of Tenant, Tenant's Trade Name and Permitted Uses) as provided in this Paragraph 7.

8. The following is added to the end of Section 11.12:

In the event any such excavation or other building operation shall be authorized or undertaken and as a result of such

excavation or other building operation Tenant is forced to close the Demised Premises for business for a period of time in excess of 2 business days then Tenant shall not be required to pay Fixed Minimum Rent for the period of time immediately following such period of 2 business days during which the Demised Premises are closed for business. Such abatement of Tenant's obligation to pay Fixed Minimum Rent shall terminate upon the earlier of (i) the date when Tenant reopens the Demised Premises for business or (ii) the date when such excavation or other building operation has been completed to an extent which would permit Tenant to reopen the Demised Premises for business. Nothing herein contained shall affect the performance by Tenant of any of the other terms, covenants and conditions contained in this Lease including, but not limited to, the payment of all items of Additional Rent.

INITIAL HERE

Trial Exhibit 15

9. Installation of HVAC Unit and Duct Work. If, in Landlord's opinion, the installation by Tenant of Tenant's HVAC Unit and duct work pursuant to Article III and Exhibit C of this Lease (a) may cause an interference with, or a delay to, another Tenant in the Shopping Center in the performance of its work or in the operation of its business or (b) cannot be performed by Tenant in time to complete Tenant's Work within the Days for Completion of Tenant's Work, then Landlord shall have the option, exercisable by notice to Tenant given prior to the time that Tenant orders its HVAC Unit (or prior to the time Tenant commences installation of its duct work), to install Tenant's HVAC Unit (or to install Tenant's duct work) on behalf of Tenant in accordance with the criteria set forth in Exhibit C. In the event Land-

lord elects to install Tenant's HVAC Unit (or Tenant's duct work), Tenant shall pay to Landlord, as Additional Rent, within 3 days after being billed therefor by Landlord, Landlord's cost of performing such work for Tenant. In the event Tenant fails to pay such amount when due, Landlord shall (without limiting any other rights of Landlord hereunder or at law for non-payment of rent) be entitled to retain and have recourse to any bond, letter of credit or escrow deposit provided by Tenant under Section 3.4.

10. Arbitration. Landlord and Tenant shall not be deemed to have agreed to determination of any dispute arising out of this Lease by arbitration unless determination in such manner shall have been specifically and unequivocally provided for in this Lease. The party desiring arbitration shall give notice to that effect to the other party and shall in such notice appoint a person as

INITIAL HERE

arbitrator on its behalf. Within 10 days, the other party shall by notice to the original party appoint a second person as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third person, and such 3 arbitrators shall as promptly as possible determine such matter; provided, however, that:

(a) if the second arbitrator shall not have been appointed as aforesaid, the first arbitrator shall proceed to determine such matter; and

(b) if the two arbitrators appointed by the parties shall be unable to agree, within 10 days after the appointment of the second arbitrator, upon the appointment of a third arbitrator, they shall give written

notice of such failure to agree to the parties, and, if the parties fail to agree upon the selection of such third arbitrator within 10 days after the arbitrators appointed by the parties give notice as aforesaid, then within 5 days thereafter either of the parties upon notice to the other party hereto may request such appointment by the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator.

Each arbitrator shall be a fit and impartial person who shall have had at least 10 years experience in the City of New York in a calling connected with the

INITIAL HERE

subject matter of the dispute. The arbitration shall be conducted, to the extent consistent with this Paragraph 10, in accordance with the then prevailing rules of the American Arbitration Association (or any organization successor thereto). The arbitrators shall render their decision and award, upon the concurrence of at least 2 of their number, within 30 days after the appointment of the third arbitrator. Such decision and award shall be in writing and shall be final and conclusive on the parties, and counterpart copies thereof shall be delivered to each of the parties. In rendering such decision and award, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this Lease. Judgment may be had on the decision and award of the arbitrators so rendered in

any court of competent jurisdiction and may be enforced in accordance with the laws of the State of New York. Each party shall pay the fees and expenses of the one of the two original arbitrators appointed by or for such party and the fees and expenses of the third arbitrator and all other expenses of the arbitration shall be borne by the parties equally.

~~11. Public Announcements. Tenant prior to the~~ expiration of three months from the date of ~~this~~ Lease, shall not make any public announcement (i) of the execution of this Lease, (ii) of Tenant's plans to open the Demised Premises for business or (iii) in any way relating to this ~~Lease or the Demised Premises~~.

E 209

Trial Exhibit 16

June 18, 1974 letter from John Feist to Leonard Schonfeld;
June 14, 1974 letter from Leonard Schonfeld to John Feist

Staten Island Mall

Feist & Feist
Managing Agents
58 Park Place, Newark, N. J. 07102
Telephone: 201-643-8500

Exhibit 27-8

CONFIDENTIAL

June 18, 1974

Mr. Leonard Schonfeld
Schonfeld Decorators, Inc.
6317 - 18th Avenue
Brooklyn, New York

Re: Staten Island Mall

Dear Len:

With regard to your letter of June 14th concerning the additional charges at Staten Island Mall, I would like to make the following comments:

1. The 75% Rent Clause - You entered into this with full knowledge of what the clause meant and, when your deal was negotiated, I'm sure that you were advised that we were making every effort to lease every inch of space in the Mall before its opening. Unfortunately, we were unable to do this, but it is to our interest—as much as yours—to see the place 100% rented.

2. Tax Rent - Based upon our knowledge of the area, we made our best estimates to come up with a tax rent that we could rely upon. Unfortunately, one never knows what the City of New York is going to do as far as taxes are concerned and, as you know, we are presently involved in certiorari proceedings on this matter. I have met with the Staten Island Borough President and also plan to meet with the tax people on Staten Island to discuss the issue.

3. Common Area Charges - We have been hit with tremendous union costs for electricians and many other services. You cannot clean a mall that consists of almost 1,000 feet (long) on two levels without people, and people cost a lot of money. It is the same for security, snow removal, etc. We came up with our best estimates, but we were totally wrong. This is very possible, and mistakes can be made by anyone.

We have tried to cut down the cleaning and security forces, and we are planning to purchase our own sweeping vehicle at a much lesser rate than what we now pay for a service. We are trying to do many other things to cut costs, but how much we will be able to achieve...I don't know.

PHS EX 16

E 210

Trial Exhibit 16
June 18, 1974 letter from John Feist to Leonard Schonfeld;
June 14, 1974 letter from Leonard Schonfeld to John Feist

Staten Island Mall

Mr. Leonard Schonfeld
Schonfeld Decorators, Inc.

June 18, 1974
Page Two

We have already received letters from the major stores complaining that Staten Island Mall is not being kept as clean as they would like, and I told you before that this would happen. There may be a possibility of going back to them and requesting more money because of these comments. I doubt that we would be successful, but I am willing to try.

4. Utility Charges - I have no control over Con Edison. As you know, they have gotten at least four or five increases since the Center opened, and they will get more. I discussed this problem with the Borough President, who told me there is nothing he can do about utility charges. We would have to go before the State Commission, which would cost a tremendous amount of money, and I doubt very much that we would get anywhere.

I appreciate all of your comments in your letter with the exception of the remark where you say that "Present retail business is poor and the forecasts are not optimistic...". On the contrary, I think that business is off, but certainly not poor, and I feel that forecasts are for a better business outlook during the next six months.

We are making every possible effort to resolve these problems, but this is New York City and anyone leasing a store in this area is aware of the difficulties.

Sincerely,

John Feist

JOHN A. FEIST
Vice President

JAF:mg

cc: Mr. L. Eisenberg
Mr. A. Warner

E 211

Trial Exhibit 16
June 18, 1974 letter from John Feist to Leonard Schonfeld;
June 14, 1974 letter from Leonard Schonfeld to John Feist

Staten Island Mall - 698-7777

June 14, 1974

Mr. John Feist
Feist & Feist
58 Park Place
Newark, New Jersey 07102

Dear John:

I read with great interest and satisfaction the recent brochure you sent extolling Feist & Feist. Interestingly enough, one of the reasons I was pleased to do business with Feist and Feist was stated in your own words - "When you deal with a real estate company, you want to be sure that its know-how is such that your exposure to risk will be at a minimum. We are that kind of real estate company."

Would you have confidence in a company that invites your investment in one of its ventures and then the following discrepancies appear between its original "realistic" projection and the bottom line figures in less than six months of operation:

	9/1/73	5/1/73	6/1/74
Rent	$2,162.69	$2,162.69	$2,162.69
Tax Rent	659.38	944.41	944.41
Common Area	215.55	926.87	926.87
Utility Charge	675.32	756.98	1,025.84
Annual	$44,554.78	$57,491.40	60,717.72

Assuming the charges for taxes, common area charges and utility charges are correct and this is definitely under dispute, your inability to rent the total leasable area in the Mall has caused an unconscionable additional charge of $5,480.16 per year to my rent because of the 75% rented clause in our lease.

E 212

Trial Exhibit 16

June 18, 1974 letter from John Feist to Leonard Schonfeld;
June 14, 1974 letter from Leonard Schonfeld to John Feist

Staten Island Mall - 698-7777

Mr. John Feist -2- 6/14/74

The original representation of additional charges for tax rent and common area charges was set at under $2.00 per square foot. Our first billing was based on $10,499. per year instead of $8,622. per year.

I feelthat in the best interests of your tenants and your own reputation, you should take immediate steps to rectify the inequities which exist between leased vs. leasable charges. The base is not the same for all tenants. You should also engage in every effort to reduce charges represented in common area charges, particularly 15% administrative overhead which you must have based on 60¢ per square foot as per your lease.

Present retail business is poor and forecasts are not optomistic. A major effort to reduce charges on your part would surely bolster the low morale that presently exists in the Mall.

Staten Island Mall should be a stepping stone, not a stumbling block, for your tenants.

Sincerely,

Leonard Schonfeld
SCHONFELD DECORATORS, INC.
President, S. I. Mall Merchants Assoc.

LS:ph

STATEN ISLAND MALL
MALL I AND CONVENIENCE CENTER
ESTIMATED EXPENSES

E 213
Trial Exhibit 17-Estimated Expense Data

Exhibit 352

Real Estate Taxes:		
Mall I and Convenience Center, including land for Mall II and III	$1,365,000	
Parcel B N.W. Corner	141,000	$1,506,000
Utilities:		
Electric	498,000	
Gas (heating and cooling)	137,000	
HVAC maintenance	46,000	
Sewage treatment	25,000	
Water	19,000	725,000
Services:		
Cleaning	288,000 (.)	
Protection	287,000 (4)	
Engineers and electrician	103,000 (.)	
Snow removal	44,000 (.)	
Landscaping	42,000 (.)	764,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing, parking areas and general	70,000 (5)	
Structural and exterior	10,000 (5)	80,000
Insurance:		
Property	17,000	
Liability	12,000	29,000
Promotional Expenses:		
Merchants Association	25,000	
Advertising and special promotions	34,000	59,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		120,000
		$3,489,000

Trial Exhibit 17

Station Island Hotel

Allied Maintenance Co. Ltd

1	2	3	4	5	6	7
			Estimated Cost	Per Allocation	Total	Line
Cleaning		(3)	267639	13331 11	280970 50	[illegible]
Landscaping		(3)	39000 00	3120 00	41120 00	[illegible]
Engineers & Electricians		(3)	149667	7577 73	157244 40	103 [illegible]
			416306	23957 84	439263 90	[illegible]
				(1)		5 (1)

E 215

Trial Exhibit 17

STATEN ISLAND MALL
ESTIMATED OPERATING COSTS

Services		Monthly	Annual	*5/1/73 5.5% Increase	
1. Day Cleaning-Indoor					
Supervisor		1,143.03			
1 Lead Porter Per Shift		1,359.90			
3 Porters Per Shift		3,765.78			
Outside					
2 Porters Per Shift		2,510.52			
1 Porter Per Shift					
Conv. Ctr.		1,255.26			
2 Relief Porters		1,255.26			
Morning Cleaning					
1 Leadman Per Shift		679.95			
10 Porters		6,799.50			
2 Relief Porters		1,255.26			
		20,024.46	240,293.52	26,432.87	
Includes Supplies & Uniforms				240,293.52	
				266,726.39	-, (.)
2. Landscaping - 3 Men		2,250.00			
Supplies		1,000.00	39,000.00	39,000.00	-, (.)
3. Snow Removal					
50 acres @ 2¢ a sq. ft.			43,560.00	43,560.00	T.(1)
4. Protection					
Supervisor-24 Hours Day			31,536.00		
Outside					
12 Midnight-8 A.M.-Weekday & Sunday					
1 Car, 1 Man	Car	2,860.00			
	Man	9,609.60			
1 Man - Conv. Ctr.		9,609.60	22,079.20		

All r jantor for Mall 3 Inly

VT10 IV

30120 1/v

15000

All 1 man

$16000

E 216

Trial Exhibit 17

8 A.M.-12 Midnight-2 shifts				
2 Cars, 2 Men	Car	5,720.00		
1 Man Conv. Ctr.	Men	57,657.60	63,376.60	
Radio - $60 x 52			3,120.00	
Inside				
12 P.M.-8 A.M.	1 Lt			
	3 Men			
8 A.M-4 P.M.	1 Lt		159,120.00	
8 A.M.-12 Noon	2 Men			
12 Noon-8 P.M.	4 Men			
8 P.M.-12 Mid.	3 Men			
4 P.M.-12 Mid.	1 Lt			
Holidays @ 1½			4,788.00	
Christmas & Easter Shopping - 2 Extra			3,564.00	
				284,463.80 - use figure T. (1)
Repairs & Maintenance				
Engineers - 10-6				
2-10				
Plus 12 hours Sat.		2,957.15	35,485.84*	37,437.56
Helpers 2				
Plus 12 hours Sat.		2,431.87	29,182.40*	30,787.43
Electrician 1 - 40 hr.			25,376.00*	26,771.68
				149167 T. (2)

43

E 217

Trial Exhibit 17

5. Supplies & Contracts				
Electrical	1,000.00	12,000.00		
Elevators	2,000.00	24,000.00		
Plumbing	500.00	6,000.00		
Painting	200.00	2,400.00		
Glazing	200.00	2,400.00		
General Repairs	500.00	6,000.00		
Parking Lot				
Repair	1,000.00	12,000.00		
Stripping & Signs	500.00	6,000.00		
			70,800.00	To (1)
Building Supplies				
Bulbs				
Building Materials (Incl. above)				
Cleaning Materials (Incl. above)		15,000.00	15,000.00	
Uniforms				
Amenities				
Structural & Exterior		10,000.00	10,000.00	To (1)
Allied Fee				
8% x (1), (2), (4).				
$400,723 x 8%		32,057.84	32,057.84	To (x)
			856,604.70	

E 218

Trial Exhibit 18-August 14, 1972 memo from D. Faughan to Irving Feist

SM-6-78-ROYAL

INTERNAL CORRESPONDENCE

To IRVING FEIST

From D. FAUGHNAN

Date 8/14/72 Subject ELY-CRUIKSHANK CO., INC. APPRAISAL

A review of the Ely-Cruikshank Co., Inc. Staten Island Mall appraisal reveals that their opinion as to the present market value of the property is based on the income capitalization method as to Mall I and the Convenience Center and the market comparison method as to vacant land representing Phases II and III and the Office Site. This valuation is summarized as follows:

			Estimated Net Income	Capitalized @ .092404	Final Value
Mall I			$2,763,000	$29,901,300	$30,000,000
Convenience Center			415,000	4,491,140	4,500,000
			$3,178,000	$34,392,440	$34,500,000
Phase II	1.5 acres	@	$120,000	180,000	
Phase III	2.13 acres	@	130,000	276,900	
Office Site	14.30 acres	@	125,000	1,787,500	
				$2,244,400	2,250,000
Final Value					$36,750,000

In order to evaluate Cruikshank's net income estimates we have restated our own income estimates (copy attached) to reflect only Mall I and the Convenience Cent This revised estimate uses the original pro-forma square foot rental amounts of $8.50 for Mall I and $6.00 for the Convenience Center and not the higher amounts based on the current leasing reports. The pro-forma amounts are being used in v of JF's less than optimistic estimates of what he will be able to lease the bala of space for.

A comparison of Feist & Feist's and Cruikshank's estimates follows:

Estimated net income of Mall I and Convenience Center:	
Per Feist & Feist	$3,812,000
Per Cruikshank	3,178,000
Feist & Feist Over Cruikshank	$ 634,000

If this difference were capitalized at the .092404 rate it would result in an in crease in final value of $6,861,000.

The attached analysis classifies and explains the major reasons for differences. It indicates substantial variances in certain areas of income and expense. It a indicates that Cruikshank apparently did not take into consideration the basic provisions of the Staten Island Mall lease which relate to utility and common a charges.

E 219
Trial Exhibit 18

STATEN ISLAND MALL
ANALYSIS OF DIFFERENCE IN ESTIMATED NET INCOME
FEIST & FEIST & ELY-CRUIKSHANK CO., INC.

	Income/(Expense) Feist & Feist	Cruikshank	Feist & Feist Income Over/(Under)	
Rental Income	$4,211,000	$4,036,591	$174,409	(1)
Net income/(expense) from expense items chargeable to tenants:				
Real estate taxes	(323,000)	(126,000)	(197,000)	(2)
Utility charges	350,000	15,000	335,000	(3)
Common area charges, exclusive of utilities	151,000	(300,000)	451,000	(4)
Telephone and vending machine income	19,000	10,000	9,000	
Vacancy allowance	(154,000)	(291,091)	137,091	
Expense items not chargeable to tenants	(442,000)	(166,500)	(275,500)	(5)
	$3,812,000	$3,178,000	$634,000	

Notes:

(1) Feist & Feist income includes $102,000 from Kiosks & Center Court which is ignored by Cruikshank. The balance of the difference results from a difference in square feet used (427,000 vs. 424,871) and the fact that Cruikshank used $8.25 instead of $8.50 for second floor space.

(2) Feist & Feist included the tax cost of undeveloped land which does not appear to be considered by Cruikshank.

(3) Feist & Feist estimates are based on current increased estimates of watts usage, hours of operation per week and rates. As costs increase, income recovery from tenants increase at a greater rate. It is not possible to relate Feist & Feist estimates with Cruikshank's estimate.

(4) Cruikshank's common area charges are in no way consistent with the lease provisions being negotiated with tenants. Major items such as cleaning, protection, snow removal, landscaping and the 15% administrative overhead recovery do not seem to have been considered as common area items by Cruikshank.

(5) Feist & Feist includes management fees and leasing commissions while Cruikshank does not. Feist & Feist also includes an additional $34,500 in administrative expenses.

INTERNAL CORRESPONDENCE

To: [illegible]

From: D. VAUGHAN

Date: 8/14/72 Subject: ELY-CRUIKSHANK CO., INC. APPRAISAL

A review of the Ely-Cruikshank Co., Inc. Staten Island Mall appraisal reveals that their opinion as to the present market value of the property is based on the income capitalization method as to Mall I and the Convenience Center and the market comparison method as to vacant land representing Phases II and III and the Office Site. This valuation is summarized as follows:

			Estimated Net Income	Capitalized @ .092404	Final Value
Mall I			$2,763,000	$29,901,300	$30,000,000
Convenience Center			415,000	4,491,140	4,500,000
			$3,178,000	$34,392,440	$34,500,000
Phase II	1.[illegible] acres	@	$[illegible]20,000	180,000	
Phase III	2.13 acres	@	[illegible],000	276,900	
Office Site	14.30 acres	@	125,000	1,787,500	
				$2,244,400	2,250,000
Final Value					$36,750,000

In order to evaluate Cruikshank's net income estimates we have restated our own income estimates (copy attached) to reflect only Mall I and the Convenience Cente This revised estimate uses the original pro-forma square foot rental amounts of $8.50 for Mall I and $6.00 for the Convenience Center and not the higher amounts based on the current leasing reports. The pro-forma amounts are being used in vi of JF's less than optimistic estimates of what he will be able to lease the balan of space for.

A comparison of Feist & Feist's and Cruikshank's estimates follows:

Estimated net income of Mall I and Convenience Center:	
Per Feist & Feist	$3,812,000
Per Cruikshank	3,178,000
Feist & Feist Over Cruikshank	$ 634,000

If this difference were capitalized at the .092404 rate it would result in an increase in final value of $6,861,000.

The attached analysis classifies and explains the major reasons for differences. It indicates substantial variances in certain areas of income and expense. It al indicates that Cruikshank apparently did not take into consideration the basic provisions of the Staten Island Mall lease which relate to utility and common are charges.

E221
Trial Exhibit 18

STATEN ISLAND MALL
ANALYSIS OF DIFFERENCE IN ESTIMATED NET INCOME
FEIST & FEIST & ELY-CRUIKSHANK CO., INC.

	Income/(Expense) Feist & Feist	Cruikshank	Feist & Feist Income Over/(Under)	
Rental Income	$4,211,000	$4,036,591	$174,409	(1)
Net income/(expense) from expense items chargeable to tenants:				
Real estate taxes	(323,000)	(126,000)	(197,000)	(2)
Utility charges	350,000	15,000	335,000	(3)
Common area charges, exclusive of utilities	151,000	(300,000)	451,000	(4)
Telephone and vending machine income	19,000	10,000	9,000	
Vacancy allowance	(154,000)	(291,091)	137,091	
Expense items not chargeable to tenants	(442,000)	(166,500)	(275,500)	(5)
	$3,812,000	$3,178,000	$634,000	

Notes:

(1) Feist & Feist income includes $102,000 from Kiosks & Center Court which is ignored by Cruikshank. The balance of the difference results from a difference in square feet used (427,000 vs. 424,871) and the fact that Cruikshank used $8.25 instead of $8.50 for second floor space.

(2) Feist & Feist included the tax cost of undeveloped land which does not appear to be considered by Cruikshank.

(3) Feist & Feist estimates are based on current increased estimates of watts usage, hours of operation per week and rates. As costs increase, income recovery from tenants increase at a greater rate. It is not possible to relate Feist & Feist estimates with Cruikshank's estimate.

(4) Cruikshank's common area charges are in no way consistent with the lease provisions being negotiated with tenants. Major items such as cleaning, protection, snow removal, landscaping and the 15% administrative overhead recovery do not seem to have been considered as common area items by Cruikshank.

(5) Feist & Feist includes management fees and leasing commissions while Cruikshank does not. Feist & Feist also includes an additional $34,500 in administrative expenses.

Trial Exhibit 18

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED INCOME & EXPENSE

	Prior To Opening Of 3rd Dept.Store	After Opening Of 3rd Dept.Store
Income	$7,121,000	$9,134,000
Operating, general & administrative expenses	3,309,000	3,724,000
Net income before depreciation, amortization of debt expense, interest and income taxes	$3,812,000	$5,410,000

E223
Trial Exhibit 18

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED INCOME

			Prior To Opening Of 3rd Dept.Store	After Opening Of 3rd Dept.Store
Rental Income:				
Mall I - 427,000 sq. ft. @ $8.50 and $9.35, respectively			$3,629,000	$3,992,000
Mall II - 115,000 sq. ft. @ $10.00				1,150,000
Convenience Center - 80,000 sq. ft. @ $6.00 and $6.60, respectively			480,000	528,000
Kiosks and Center Court - 5,100 sq. ft. @ $20.00 and $22.00, respectively			102,000	112,000
Total Rental Income *			4,211,000	5,782,000
Tax Rent			973,000	1,193,000
Utility Charges			911,000	1,118,000
Common Area Charges:	Prior To 3rd Dept.Store	After 3rd Dept. Store		
Utilities	$164,000	$202,000		
Services	764,000	764,000		
Repairs & supplies	70,000	86,000		
Insurance	12,000	15,000		
Administrative overhead	151,000	160,000	1,161,000	1,227,000
Telephone and Vending Machine Income			19,000	21,000
			7,275,000	9,341,000
Vacancy Allowance			154,000	207,000
			$7,121,000	$9,134,000

* Rental income will increase $831,000 to $6,613,000 after the Fourth Department Store opens. Other escalations contained in leases provide for an estimated increase in rentals of $336,000 in the 16th and $109,000 in the 21st year.

Percentage rents are not reflected above since it is estimated that they will not become an appreciable factor until five years after opening.

STATEN ISLAND MALL
MALL I AND CONVENIENCE CENTER
ESTIMATED EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center	$1,130,000	
Undeveloped Land	166,000	$1,296,000
Utilities:		
Electric	498,000	
Gas (heating and cooling)	137,000	
HVAC maintenance	46,000	
Sewage treatment	25,000	
Water	19,000	725,000
Services:		
Cleaning	288,000	
Protection	287,000	
Engineers and electrician	103,000	
Snow removal	44,000	
Landscaping	42,000	764,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing, parking areas and general	70,000	
Structural and exterior	10,000	80,000
Insurance:		
Property	17,000	
Liability	12,000	29,000
Promotional Expenses:		
Merchants Association	25,000	
Advertising and special promotions	34,000	59,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		150,000
		$3,309,000

STATEN ISLAND MALL
MALL I, II AND CONVENIENCE CENTER
ESTIMATED OPERATING EXPENSES

Real Estate Taxes:		
Mall I and Convenience Center	$1,350,000	
Undeveloped land	166,000	$1,516,000
Utilities:		
Electric	611,000	
Gas (heating and cooling)	168,000	
HVAC maintenance	56,000	
Sewage treatment	25,000	
Water	23,000	883,000
Services:		
Cleaning	288,000	
Protection	287,000	
Engineers and electrician	103,000	
Snow removal	44,000	
Landscaping	42,000	764,000
Repairs, Maintenance & Supplies:		
Electrical, elevators, plumbing, painting, glazing, parking areas and general	86,000	
Structural and exterior	10,000	96,000
Insurance:		
Property	21,000	
Liability	15,000	36,000
Promotional Expenses:		
Merchants Association	31,000	
Advertising and special promotions	42,000	73,000
General & Administrative Expenses:		
Salaries - manager, secretarial, bookkeeping and other administrative	69,000	
Employee benefits and payroll taxes	12,000	
Professional fees	15,000	
Telephone	8,000	
Office supplies	7,000	
Miscellaneous	20,000	131,000
Management Fee		75,000
Leasing Commissions		150,000
		$3,724,000

E 226
Trial Exhibit 18

STATEN ISLAND MALL
COMPARISON OF ESTIMATED CONSTRUCTION COSTS
JULY 1971 WITH JULY 1972

	JULY 1971	JULY 1972
Land	$ 5,923,000	$ 6,062,000
Site Work	2,936,000	4,211,000
Construction:		
Mall I	13,442,000	14,800,000
Convenience Center	1,630,000	1,520,000
Mall II	3,843,000	3,727,000
Non Structural	1,224,000	3,504,000
Real Estate Taxes:		
Land	767,000	787,000
Buildings	128,000	31,000
Interest	3,119,000	2,736,000
Contingency	1,137,000	
	$34,149,000	$37,378,000

Exhibit 1

E227
Trial Exhibit 19 - November 16, 1972 letter from G.W. Kirtland to John F. Kelly

Staten Island Mall

Please reply to: Feist & Feist, Managing Agents
58 Park Place, Newark, N.J. 07102
Telephone: 201-643-8500

EXHIBIT 15 ID 11/10/76

November 16, 1972

Mr. John F. Kelly
Corporate Director
Real Estate
Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

Re: Magnavox Home Center
Staten Island Mall

Dear Mr. Kelly:

Enjoyed talking to you about the above subject today and as I promised attached you will find the following:

a. Brochure and other printed material.
b. Leasing plans L-1 and L-2.
c. Statistical comparison, income vs. population.

159

As I explained on the telephone, we are under negotiation with Friendly Frost and as of this writing, we do not know whether we would be able to encourage a Magnavox store, however, this decision will be finalized within the next ten days. In any event, I realize from our conversation that Friendly Frost going into Staten Island Mall would make no difference to your entrance.

I will give you a day or two to digest the attached material and I will then call you so that we can better and further discuss this project, resulting from the plans you will have at hand.

Sincerely,

FEIST & FEIST

G. W. Kirtland

G. W. Kirtland
Associate

GWK:hm
enc.

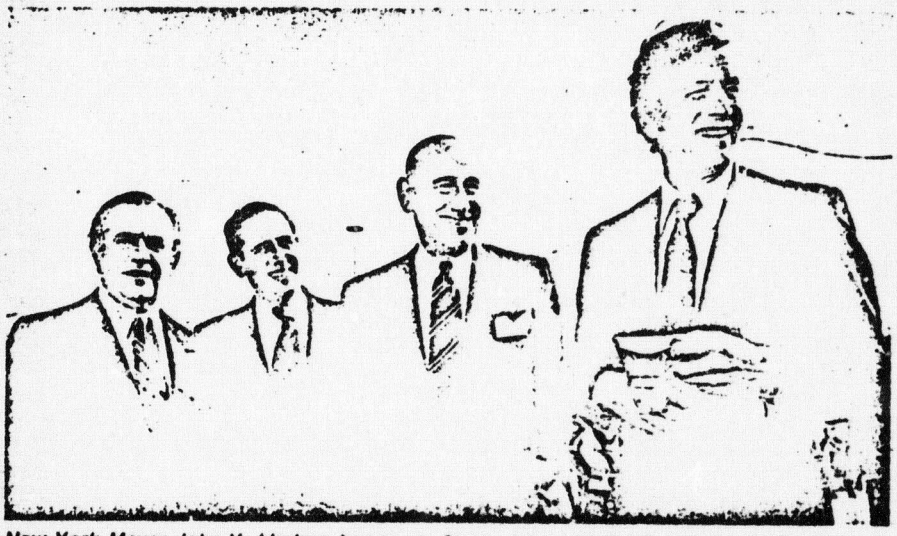
Plaintiff's Ex. 19

E 228
Trial Exhibit 19

STATEN ISLAND Mall

VOLUME 1, NO. 2 NOVEMBER, 1972

MACY'S OPENS; SEARS IS NEXT



New York Mayor John V. Lindsay beams as Staten Island Mall's first major store, Macy's, is open. With the mayor is (L to R) Al Warner, John Feist and Irving Feist. They are mall general manager, vice president and president, respectively, of Feist & Feist, mall developers.

Shopping Center Set for Opening March 1, 1973

Staten Island Mall took a giant step forward in early October with the opening of Macy's department store.

The three-level, 235,000 square foot store now anchors one end of the giant retail center that, when completed, will be the largest enclosed shopping mall in New York City.

Rising at the other end of the mall is a 188,000 square foot Sears, Roebuck & Co. department store. Completion is scheduled for early next year.

The dual-level, climate-controlled mall that separates the two major stores is scheduled to open next Spring. It will contain some 140 specialty shops. Two other department stores also are planned for Staten Island Mall, which will serve a trading area estimated to be in excess of three quarters of a million persons. Site is 124 acres.

Feist & Feist, developers of the mall with associated investors, said that leasing has surpassed the 50 per cent mark. (See separate story for some of stores scheduled to open).

In its first phase, the mall will provide parking for 5,500 cars. It also will employ an estimated 4,500 persons. Macy's recruited about 600 persons for its first Staten Island store, virtually all of them from the Borough of Richmond.

The Macy's opening was attended by several thousand shoppers and many public and business officials. The V.I.P. list included New York Mayor Lindsay, Staten Island Borough President Robert Connor, Economic Development Administrator Ken Patton, Environmental Protection Agency Commissioner Jerome Kretchmer, U.S. Congressman John Murphy, State Senator John Marchi, City Councilmen Edward Curry and James Smith and Assemblyman Louis Russo.

Connor Lauds Mall Developer, Stores

Staten Island Borough President Robert T. Connor expressed gratification and enthusiasm for the Staten Island Mall.

Here are exerpts from his remarks:

"At full development, Staten Island Mall will employ approximately 4,500 people. Creation of this major shopping center in the metropolitan area demonstrates the belief of both Macy's and Sears — as well as some 140 other great stores — in the strength and future of our borough's remarkable retailing potential.

"It emphasizes the importance to an area of a healthy and competitive retail effort in order to give customers the greatest shopping advantages.

"Staten Island is fortunate to have developers as experienced and forward-looking as Feist & Feist developing the area."

Melville to Open Six Key Stores

Melville, the publicly traded company whose 1971 sales set a record of more than a half-billion dollars, has leased six stores at Staten Island Mall.

The stores will represent six footwear and clothing divisions of Melville and comprise more than 15,000 square feet of space.

We chose Staten Island Mall, said William Sperry, Melville's vice president for corporate development, "because that's where the business is being done." He also cited the expansion potential for business at the key location.

The six Melville stores are: Vanguard Shoes, which will sell the famous Bally of Switzerland footwear; Foxmoor Casuals, women's apparel; Miles Shoes; Thom McAn Shoes; Chess King, young men's apparel, and Consumer Value Stores (CVS), health and beauty aids.

Part of early morning opening day crowd at Macy's, one of the department stores that will anchor Staten Island Mall. Sears will provide another anchor when it opens early next year. To date, more than half of the 1.8 million square foot shopping center has been leased.

Representing Macy's was K. Wade Bennett, president of Macy's New York. Irving Feist, president of Feist & Feist, represented the developers. Also at the opening ceremonies were John Feist, vice president of the firm, and Albert Warner, general manager of Staten Island Mall.

Mayor Lindsay called Feist and Feist "great developers" and added, "Staten Island Mall shows what the business community and the public community can do working together."

Borough President Connor told the opening day shoppers, officials and press that the entire mall was progressing on schedule and would open on target next spring. He also cited the job opportunities the mall was bringing to the people of his borough.

Like most exciting events, the Macy's opening had its share of surprises. Three children became lost, all of them belonging to the same mother. Mr. Bennett, with the aid of his microphone, got the family together again.

The Macy's store was designed by Welton Becket and Associates, master planners for the entire mall. Planned for Macy's but not yet open are a restaurant and a rooftop garden and patio shop.

The mall is situated at the intersection of Richmond Avenue and Richmond Hill Road in the geographical center of Staten Island. Macy's is located at the Richmond Hill Road end of the complex.

John Feist reported that all of the structural steel work at the site is in place.

He also said that half of the roof and all of the second-level slabs were poured and completed and that more than half of all the exterior walls were now in place.

When completed, the mall will cover 2.8 million square feet, including 1,000,000 square feet of commercial space. It will take the shape of a cruciform configuration, with department stores at the end of each axis.

Retail outlets will be placed within two-level malls, enclosed and weather-controlled with dramatic lighting to emphasize the indoor qualities of the area.

Focus of the mall interior will be a central court suspended between mall levels and visible from both with a stage for exhibits, entertainment and community events.

President Bennett of Macy's expressed the outlook for the entire Staten Island Mall when he said at his store's opening: "We think our new Macy's is a pacesetter in contemporary design for mass merchandising." Macy's hours will be 10 a.m. to 9:30 p.m. six days a week.

Macy's President is Enthusiastic

K. Wade Bennett, president of Macy's New York, said: "The enthusiasm in the community with which the new Macy's in Staten Island has been received has been far beyond our expectations. This is evidenced by the excellent sales figures and the heavy traffic."

Mr. Bennett further stated, "We are looking forward to the opening of Sears and the 140 or so other fine specialty stores which will indeed make the Staten Island Mall one of the most outstanding shopping centers in the country."

Growing List of Outlets

Scores of national and local retail chains have leased stores at Staten Island Mall since construction of the development was announced. Here is a partial list:

Lerner's Shop, Walden Books, J. G. Music Center, National Shoes, Kinney Shoes, National Shirt, N. R. J. Pretzels, Animals 'n Things, Tinder Box, Nichols Striderite Shoes, Orange Bowl, East River Savings Bank, Fifth Avenue Cards, Chess King, C. V. S. Drug, Foxmoor Clothes, Miles Shoe, Thom McAn, Vanguard Shoe, Vincent Jewelers, New York and Suburban Savings and Loan Association, Schonfield Decorators, Kaufman Brothers Toys, Littman Jewelers, Home Decor, Naturalizer Shoes, Wicks 'n Sticks, Possibilities, Inc., Hobby Crafts, Cheese Villa, Sgarlato Deli, Parnassus Boutique, Karmelkorn and two Baskin-Robbins Ice Cream Stores.

Sears Will Be A 2nd 'Anchor'

The Sears, Roebuck and Company outlet taking shape at the southern end of the mall will provide a second anchor for the specialty shops between the two major department stores.

A Sears' spokesman said the store will open in the early Spring of next year.

It will contain 50 merchandise departments in two levels.

Another feature will be a 21-car automotive center. It will offer such services as installation of tires, batteries, radios, tape recorders, seat belts, alternators, regulators, carburetors, spark plugs and air conditioners as well as complete exhaust system, brake, tuneup, wheel balancing, alignment, front end, lubrication and oil change services.

Warner is Named General Manager

Albert "Al" Warner, who began his career in retailing 28 years ago, has been named general manager of Staten Island Mall.

For the past 10 years, he served as sales promotion director at Cross-County Center, Yonkers, N.Y., and at Parkdale Plaza, Corpus Christi, Tex.

Feist & Feist, developers with associated investors of Staten Island Mall, is the managing agent of those two centers.

"Al is a retailer's retailer," said John Feist, vice president of the development firm, in announcing the Warner appointment. "He brings to this job a world of shopping center experience. And he can speak to the merchant and the developer with equal knowledge and expertise."

Al Warner: 28 years' experience in retailing and promotion.

Warner has been an active member of the International Council of Shopping Centers since its creation in 1957.

E 230

~~Trial Exhibit 19~~

STATEN ISLAND Mall

EXHIBIT 15A

VOLUME 1, NO. 1 AUGUST, 1972

OPENING SET FOR SPRING OF 1973

Construction Rushing Ahead for March 1973 Opening

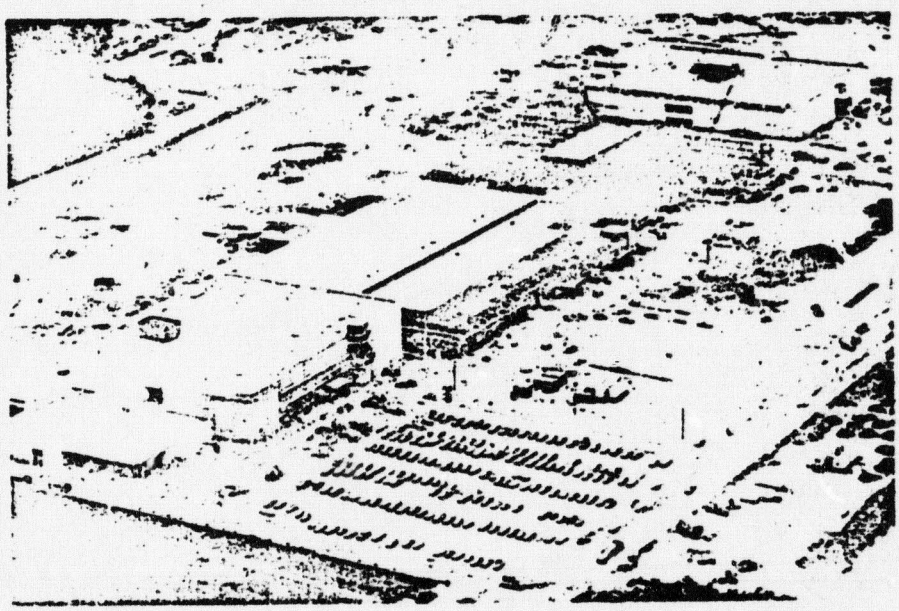
Staten Island Mall, the 2.8 million square foot business complex now rising at the intersection of Richmond Hill Road and Richmond Avenue, will be the largest shopping center in the City of New York and one of the largest in the nation. Already 90 per cent of the steel work is in place and construction crews of 210 men are at work eight hours a day moving construction towards the spring of 1973 opening date. The mall will include 1.8 million square feet of enclosed shopping center anchored by Sears and Macy's and two other department stores.

Before the steel went into place, a steady stream of truck mixers delivered vast amounts of concrete, which was poured into foundations and floors. In addition, 18,000 bricks have been set into place.

Located at the geographical center of Staten Island, the enclosed, weather-controlled mall will offer a welcome departure in shopping mall design. Instead of trying to hide the fact that the mall is enclosed and weather controlled, Feist & Feist, the real estate firm which is developing the mall with associated investors, decided to take advantage of the indoor atmosphere. The interior emphasis will be on an atmosphere that is sparkling and theatrical, and an elaborate lighting system will automatically adjust in intensity for day and night shopping.

Included in the shopping complex will be four department stores. Work is nearing completion on a Sears' store and a Macy's store. Two other department store tenants will be announced shortly.

When the mall opens in the spring of 1973, it will offer parking for 10,000 cars. ● ● ●



Ninety per cent of the steel work is in place on the 124 acre Staten Island Mall site at intersection of Richmond Hill Road and Richmond Ave. Macy's will open this fall. Rest of the mall will open in the spring.

Mall Breaks 50% Mark

More than 50 per cent of the space at Staten Island Mall has been leased by local and national chains. Following is a list of some of the tenants:

Lerner Shops ■ East River Savings Bank ■ National Shoes ■ National Men's Shops ■ Walden Books ■ Jack Grossman Enterprises (Scene II music shop) ■ Kinney Shoes ■ Vincent (Tappins) Jewelers ■ Animals 'N Things ■ Bavarian Soft Pretzels ■ Cambridge Coffee, Tea & Spice House ■ Cheese Villa ■ Home Decor ■ Kaufman Brothers Toys ■ Nichols Children's Shoes ■ N. R. J. Pretzels ■ Orange Bowl ■ Tinder Box.

Borough President Sees Strong Market

Staten Island is the fastest growing borough in New York City. According to census figures, Staten Island has a population of 322,067. And this is expected to increase to 375,000 by 1975 and to 450,000 by 1980. All of these are potential customers for Staten Island Mall, the 2.8 million square foot business and retail complex, which will open at the geographical center of the Borough in the Spring of 1973. In addition, it is expected that the Mall will draw shoppers from Brooklyn and from New Jersey.

"Staten Island is a sleeping giant among retail markets," says Irving Feist,

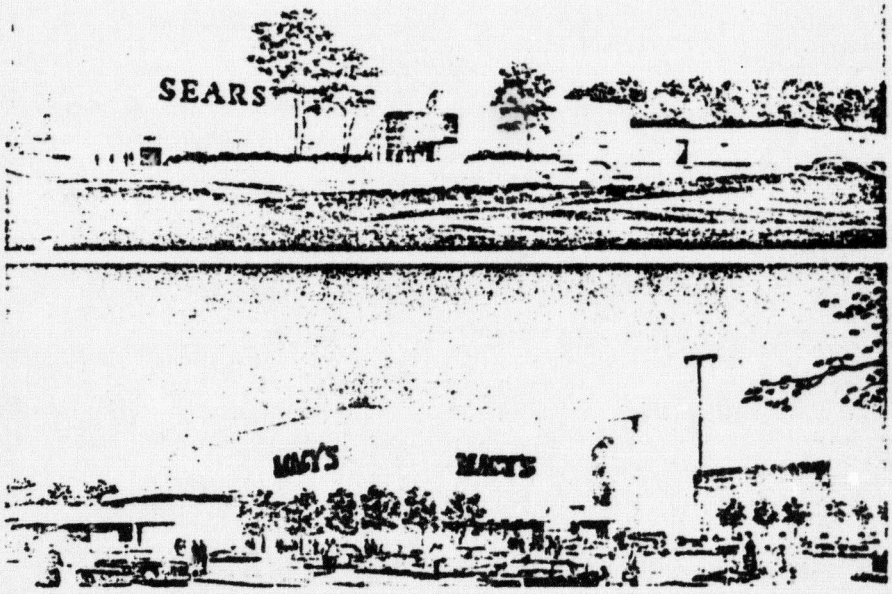
Continued on Page 2

president of Feist & Feist, the real estate firm that is developing the 124-acre Staten Island Mall at the heart of the Borough. "It is the most exciting business frontier in the state and perhaps the Northeast — a partly urban, partly suburban borough that, by itself, ranks 46th in buying power among the 200 U.S. cities leading in total income."

According to Sales Management's 1971 Survey of Buying Power, Staten Island's estimated net effective buying income of $1,120,208,000 placed it ahead of such cities as Rochester, N.Y.; Yonkers, N.Y.; Sacramento, Cal.; Miami, Fla.; and Akron, Ohio.

Although Staten Island's buying power is remarkable, figures show that the borough lags in retail sales. For example, it is behind Miami, which is 33rd; Rochester, 44th; Sacramento, 52nd; Akron, 65th; and Yonkers, 78th. In fact, Staten Island, which is 46th in buying power, ranks 91st in retail sales. Staten Islanders leave their island when they go shopping, but Staten Island Mall is expected to change all that.

Borough President Robert T. Connor put it this way: "As the population of our island increases at record proportions, it is necessary that the conveniences of living and additional employment opportunities are made available for the residents of the fastest growing borough. Staten Island Mall, which will be an important new downtown for the borough, will provide both." ● ● ●



Artist renderings of the Sears, Roebuck Co. store and the Macy's store which will anchor Staten Island Mall. Two other department stores will join them in the 2.8 million square foot mall.

Automotive Center Will be One of 50 Departments at Staten Island Sears

Sears, Roebuck and Company's store will be at the opposite end of the Staten Island Mall from Macy's, set on a 14-acre site. Automobiles and their problems play a large role in Sears merchandising and the 187,233 square foot store will have an accompanying automotive center capable of handling 21 cars. The automotive services to be offered include the installation of tires, batteries, radios, tape recorders, seat belts, alternators, regulators, carburetors, spark plugs, air conditioners, complete exhaust systems, and brakes. The Sears automotive personnel will be able to do tuneups, wheel balancing and alignments, front end repairs, lubrications and oil changes.

Sears' two-story building will contain 50 different departments.

"The Staten Island Mall store is the result of years of research and planning. All statistics — population, retail, sales, economic potential — pointed to the need for this new Sears department store," said James A. Milne, general manager of Sears retail operations in the metropolitan New York area and northern New Jersey. "We are most optimistic concerning our future in the Staten Island Mall."

Architects for the Sears store are Abbott, Merkt & Co., and the general contractor is Rand Construction Co.

Sears recently named Robert J. Sokolowski manager of its Staten Island Mall store. Mr. Sokolowski, who has been with the company since 1956, has managed the Sears stores in Rockville Centre and on Fordham Road. ● ● ●

Irving Feist (left) and his son John are President and Vice President of Feist & Feist, the complete-service real estate firm that is developing Staten Island Mall with associated investors.

Macy's Plans Late '72 Opening

Nearing completion at Staten Island Mall is the first Macy's store on Staten Island. With its opening before the end of the year, the store will provide Macy's with outlets in all five New York City boroughs. "Our move emphasizes our belief in the health and future of New York City," said K. Wade Bennett, President of Macy's New York Division.

The Macy's at Staten Island Mall will be a three-story steel frame building with a split concrete block and brick exterior. The 233,530 square foot interior will develop further the intimacy of the shop concept, in which departments and areas within them are carefully delineated to help simplify selection of merchandise for shoppers. Besides the traditional departments, there will be a budget store, snack bar and restaurant as well as adjacent outdoor selling area.

It is estimated that about five hundred persons will be employed in Macy's Staten Island, recruited primarily from the area. When completed, the entire 2.8 million square foot mall and convenience center will employ about 4,500 persons.

This is the third time that Sears and Macy's have gone jointly into a major shopping center. Their other two ventures are in the tri-city area of Albany, Schenectady and Troy and in Smithhaven.

Architect of Macy's Staten Island is Welton Becket and the general contractor is F. Briscoe and Company.

Manager of the new Macy's store will be Abraham Fried. Mr. Fried joined Macy's as a management trainee in 1947. ● ● ●

E 232
Trial Exhibit 19

FHA approves more

2,200 units under way in 14 projects

By PETER HARRIGAN

More than 2,200 housing units in some 14 projects involving private developers and Department of Housing and Urban Development - Federal Housing Administration assistance programs are in various stages of planning or actual construction on Staten Island and are routinely carried out without consultation with the four community planning boards, the borough president and even, in many cases, the City Planning Commission.

Under existing regulations, a developer seeking federal assistance must first submit a proposal to the FHA, followed by an application which is subjected to a feasibility study.

If, according to an FHA spokesman, the agency determines that "there is a need for the housing . . . the location is suitable (and) . . . that it meets project selection criteria," the developer is then invited to submit detailed documentation of such particulars as plans, drawings and proof of financial security.

If, in turn, these are approved, the FHA issues the builder a "commitment," meaning that the government will insure the mortgage and, if applicable, provide a subsidy to reduce monthly carrying charges for lower income tenants.

Because of federal involvement, construction proposals do not have to be submitted to the City Planning Commission for review unless a zoning variance is required. And, the spokesman said, the borough president's approval is "not needed," while the community boards "simply have no jurisdiction over the construction."

In fact, the FHA is not required to disclose housing proposals under negotiation and it is entirely possible that local residents would not know of impending construction until work actually begins. Asked if plans were purposely hushed-up, the FHA spokesman replied: "I can't speculate on that."

Borough President Connor, who has frequently voiced his opposition to the arrangement, said that "We try to inject ourselves into these projects so we can get some information, because they (the FHA) won't give it to us. I realize there is a delineation of federal and local powers. "We just have to do the best we can with what we have."

NOT TELLING ALL

Although admitting that "we think we have an arrangement" whereby the FHA will supply local officials with periodic listings of planned projects, Connor observed that "They are telling us about some of them, but I don't know if they're telling us about all of them."

Connor also said that attempts to offer recommendations to the FHA on specific projects appear to be futile. In June, for example, letters were written by Connor to the four community boards, informing them of construction planned for their particular areas..

On July 18, Connor said, he received a letter from Board 3, in which objections to several of the projects were raised. Later in July, Connor continued, he wrote to John B. Maylott, director of HUD's regional office, requesting that final approval of the projects "be withheld until the objections are resolved." To date he has received no reply.

"We keep pushing them, but again a law is a law and the federal government is supreme and there's not a tremendous amount of leverage that this office has," Connor observed.

In an FHA status report issued Aug. 31, a total of 2,288 units were listed in six projects under construction, three which have been studied and found feasible, and five for which preliminary plans have been filed.

GOING UP

Under construction are the three-building Terrace Gardens complex, at Weser Ave. and Steuben St., Concord, consisting of 98 units each; the 186-unit Elbee Gardens project at Weser and Elbe Aves. Concord; the Seaview Arms apartments, 85 units, at Fairway and Osgood Ave., Stapleton, and Seaside Plaza, 274 units, on Seaside Blvd., South Beach.

Feasibility reports have been issued for the 86-unit Rockland Apartments, at Rockland and Saxton Aves., New Springville, the 131-unit Willowbrook project at Victory Blvd. and Canterberry Ave., Willowbrook, and the Eltingville Gardens apartments, with 110 units, at Sylvia St. and Stuyvesant Ave., Eltingville.

Preliminary plans have been submitted for feasibility studies of the 530-unit Howland Hook development on Howland Ave., Mariners Harbor; the Bayberry Apartments, with 98 units, at Amboy Rd. and Armstrong Ave., Great Kills; Belmont Tower, 114 units, at Vine St. and Belmont Pl., St. George; Forest Gardens, 284 units, at Union and Van Pelt Aves., Mariners Harbor, and a 96-unit Rockland Apartment project at Rockland and Saxton Aves., New Springville.

POLITICS

In a realted housing subject, sources close to the situation say politics — and nothing more — may delay the start of serious negotiations between local politicians and the state Urban Development Corp. for the

BEST COPY AVAILABLE

E 233
Trial Exhibit 19

STATEN

no-consult' hous...

construction of low and moderate income housing on Staten Island at least until after Election Day and possibly well into next year.

One theory for the apparent foot-dragging, offered by Jerry Poe, deputy director of the UDC's New York region, "could very well be" the reelection hopes of Island legislators who are running with the backing of both the Republican and Conservative Parties.

As a matter of policy, the UDC may not move into a community until it has been "invited" to do so by local elected officials who, in the Island's case, would be Borough President Connor, Congressman John M. Murphy, State Sen. John J. Marchi and Assemblymen Edward J. Amann Jr. and Lucio F. Russo, according to a UDC spokesman.

Since two of the five—Amann and Russo—are running on both Republican and Conservative tickets and since the Conservative Party makes no secret of its opposition to UDC projects, it would seem unlikely that any "invitation" to build would be forthcoming from the incumbents at least until after Nov. 7.

WAITING IT OUT

On the other hand, however, the UDC—in apparent realization of the fact that any invitation will not be issued until after the election, if at all, and cognizant that any pressure on the incumbents could jeopardize prospects for a post-election welcome to the Island—seems to prefer to "w . it out," at least for a while.

Although the UDC is reportedly looking at several parcels of land on the Island, including the site of the former Piel Bros. brewery in Stapleton, and has sent representatives to address at least two community groups on "where the UDC stands" regarding housing development, no definite plans have thus far been formulated.

"We would be happy to be helpful, if we are invited," Poe said in a telephone interview, although he added that such an invitation "may not come until 1973." Asked if the UDC's position is that the reelection of officials is considered a higher priority than housing, Poe replied: "I don't want to comment on that."

Connor, who is not running for reelection until next year, said that during a recent conversation with UDC president Edward J. Logue he was told that any type of serious preliminary discussion should not be expected for "two or three months."

The borough president said that he favors construction of low-density housing for the elderly on the Island, a project that could be initiated through UDC arranged Mitchell-Lama financing, which offers tax abatements to housing developers contingent upon regulated rates of return.

Asked whether UDC projects are, in fact, being delayed purposely until after the election, Connor replied: "I think your guess on that is probably accurate."

Both Amann and Russo, while claiming to be flatly opposed to UDC development on the Island, were nevertheless careful to qualify their positions to some degree.

Amann, asked if he would fight any UDC bid for inroads here, said: "I believe I would . . . because I don't believe the people want it. I don't think there's any great need for it," he said of UDC housing on the Island, but he added: "It would depend, again, in terms of what they're going to build."

Claiming that "the intent of the law (creating the UDC) was to develop in cities and not in suburban areas" like the Island, Russo said: "If I had to express an off-hand opinion, I would be opposed to their coming here because UDC is intended for slum areas and I don't think there are any slum areas on the Island."

"I would not be prone to inviting them here unless I had an idea of what they were going to do," Russo added, intimating that should a specific UDC proposal meet his approval he would not oppose it.

Joseph Margolis, executive assistant to the Office of Staten Island Development, while reluctant to discuss the possible political implications of the timing of the UDC's advent to the Island, would issue only the terse statement: "We are for any vehicle that will provide for the proper development of remaining acreage other than in a piecemeal manner."

He would not say whether the UDC was considered a suitable "vehicle" or whether or not his office also was willing to sit the matter out until after the election.

EXHIBIT 15

PLP (Alanson)
EXHIBIT 15 D
to
4/13/70 W.B.

	County of Richmond Staten Is.	City of Rochester, N. Y.	City of Akron, Ohio	City of Mobile, Alabama	County of Madison, Wisc.	County of Fort Wayne, Indiana	County of Columbia S.C.
Population	291.0	292.2	301.4	291.4	284.1	272.0	329.1
Effective Buying Income (000)	1,001,331	1,014,786	997,583	704,188	867,102	933,843	828,631
E. B. I. Per Household	11,864	10,292	10,242	8,546	10,225	11,170	9,996
Total Retail Sales (000)	362,573	780,622	525,108	427,257	548,207	554,391	487,387
(1) Food (000)	120,659	146,629	104,418	87,707	99,072	114,770	97,718
(2) General Merchandise (000)	54,375	166,976	154,730	96,307	89,754	130,111	95,017
(3) Furniture & Appliances (000)	18,391	48,821	21,921	22,856	27,143	22,280	20,594
(4) Automotive (000)	49,459	155,647	93,834	83,188	95,246	98,949	107,890
(5) Drug (000)	11,153	25,341	16,903	15,945	20,310	20,208	13,464
Households by Cash Income Groups							
(a) 0 - 2999	9.5%	15.6%	14.3%	22.9%	15.3%	12.9%	21.8%
(b) 3000 - 4999	8.3%	11.2%	10.0%	16.8%	12.6%	8.9%	15.4%	
(c) 5000 - 7999	22.5%	21.7%	23.2%	27.7%	26.4%	20.3%	22.7%
(d) 8000 - 9999	18.6%	16.3%	18.2%	13.2%	17.1%	18.0%	11.9%
(e) over 10,000	41.1%	35.2%	34.3%	19.3%	28.6%	39.9%	28.2%
Households per Thousand	84.4%	98.6%	97.4%	82.4%	84.8%	83.6%	82.9%

E 234

Trial Exhibit 19

Trial Exhibit 19 E235

	County of Richmond Staten Is.	City of Lancaster, Pa.	City of Reading, Pa.	City of Spokane, Wash.	City of Chattanooga, Tenn.
Net Effective Buying Power	1,001,331	944,136	982,945	904,040	856,793
Per Capita	3,441	3,106	3,315	3,069	2,717
Per Household	11,864	10,364	10,113	9,378	8,990
Net Cash Income	907,128	870,176	905,531	818,942	796,694
0 - 2999	9.5	12.6	13.3	19.6	19.9
3000 - 4999	8.3	11.6	10.8	12.8	14.4
5000 - 7999	22.5	25.3	24.5	24.5	24.9
8000 - 9999	18.6	17.6	18.1	16.0	14.7
10,000 - 15,000	25.3	21.9	23.1	17.4	17.0
15,000 - 25,000	12.5	8.1	7.9	7.4	6.6
Over 25,000	3.3	2.9	2.3	2.3	2.5
Population	291	304	296	294.6	315.4
Total Retail Sales	362,573	584,772	490,258	558,887	547,035
General Merchandise Sales	54,375	89,810	90,998	123,179	100,338
Food Sales	120,659	119,478	97,924	112,938	121,650
[illegible]iture & Appliance Sales	18,391	29,640	26,094	28,346	19,934
	11,153	12,140	9,228	21,251	19,934
	24,497	22,011	22,526	20,747	25,048

E236
Trial Exhibit 22 - Record of shopping center negotiation dated December 4, 1972

Exhibit 15

Rejected

22,342
15,175
27,518

RECORD OF SHOPPING CENTER NEGOTIATION

Meeting No. 1

Date Dec 4 1972

Name of Mall Staten Island Mall

Address Richmond Ave / Richmond Hill Rd

City Staten Island, NY

Developer Feist + Feist

Address 65 Park Place Newark N.J. 07102

City Phone 201-643-8500

Developer Negotiator George W Kirtland

Magnavox Negotiator Tiffany - Mace Kirk - Dave Lane?

Mall Land Area _____ Acres Mall Retail Area _____ Sq. Ft.

Total Stores _____ 75th

Major Tenants, Size of Units Sears - Macys (253,000 SF) 75th

Lease Proposal

Size of Proposed Store 3422 S.F.

Location of Proposed Store Space 220 + 425 SF in Space 215

Base Rent — 725 [illegible] 600 [illegible] Percentage 4%

Approved 7.50

Mall Maintenance [illegible] Real Estate Taxes [illegible]

Estimated Cost to Fixture 8/4.61 Fixturing Allowance [illegible]

Merchants Assn. 20¢/SF + 20¢ opening Other Charges _____

6.50 product

Landlord's Construction Obligation Shell + Other Basic Mall + Common Areas [illegible]

Term of Lease 15 yrs or 20 yrs - 15 to 20 th yr 100 Space

Proposed Opening Date April 1 1972

E237
Trial Exhibit 22

Recommend: Acceptance_____ Rejection _____

Comments: _____

EST RENTABLE SQUARE FEET

Est. R. SF. ~~3422~~ + 250 ÷ R. 3422 = 7.30 SF.

WITH 100 SQ. FT. = 6.30/SF

Space on first floor

ASSUMING INCREASE of 16% THE RENT SF + THE UNRENT SF

AT 6% OVERHEAD AND S.T.

(X) expected sales L/C unlikely to cause for more $7.50/SF

P/F EX 22

Base Rent 7.50
TA + 1.00
MIN MAINT. 60
8.50 X 3422 = 31,637 = $632,740

$632,740 Volume necessary to achieve 5% Rental.

George Kirkland
1000/SF

10¢ Screen in base. wh sid -
10¢ Screen in top - on 4th
Carp - Floor Shop - 60¢ /L
Mech base 20¢ /SF
20¢ /SF carp

RC L/L 25¢ / EST. $1.00 So LL. →

Shell - Accumes -
concrete walls 6" concrete block walls
concrete floor.
400/SF Ten Bldg
9 Stories / yr. - 4000 SF - 1 floor in
Lease ten 15 yr - 16th 20th yr +$1.00/SF.

2972 SqFT	23,954	.047
450	12053	
3422 SqFT.	.066 Tenant	
	5.2%	

3422 SF $600
60 CAM
166 TAX
726

E239
Trial Exhibit 23 - January 15, 1973 letter from G.W. Kirtland to John Kelly

Exhibit 32

Staten Island Mall

Please reply to: Feist & Feist, Managing Agents
58 Park Place, Newark, N.J. 07102
Telephone: 201-643-8500

January 15, 1973

Mr. John F. Kelly
Corporate Director
Real Estate Department
The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

Re: Magnavox Home Center
Staten Island Mall

Dear Mr. Kelly:

Resulting from a conversation with Mr. Dale Kelly concerning the above subject and his confirmation after a conversation with you regarding the minimum rent, my committee has authorized me to offer you the following terms and conditions for a Magnavox center in the Staten Island Mall.

Location: Southern half of Room No. 201.

Size: Approximately 3,660 square foot, 30' x 122'.

Term: 15 years.

Rent: $6.50 per square foot.
10% increase minimum rent upon opening of third department store.
10% increase minimum rent upon opening of fourth department store.

Percentage Rent: Four Percent (4%).

CAM: Tenant will pay his proportionate share. Will be billed at $.60 per square foot.

MA: $.20 per square foot plus $.20 per square foot pre-opening expense (one shot deal). Tenant must participate in shopper.

DIF EV 7 R

Staten Island Mall

Mr. John F. Kelly
Magnavox Company

January 15, 1973
Page 2

Real Estate Taxes: Landlord will pay first $.25 per square foot. Tenant will pay his proportionate share all over.

Tenant Allowance: Landlord will contribute $2.00 per square foot over shell plus $3.00 per square foot out of one-half percentage rent.

Guarantee: Tenant's parent company will guarantee.

Quite frankly, it has been very difficult for me to obtain this minimum rent that you agreed to in addition to a 4% of gross sales, however, we feel you are a very desirable tenant and you will be successful in the metropolitan New York area. I must hear from you on the above by no later than January 22, 1973.

Sincerely,

FEIST & FEIST

George

G. W. Kirtland
Associate

GWK:hm
cc: Mr. Dale Kelly

E241
Trial Exhibit 24 - Request for check dated August 31, 1973

REQUEST FOR CHECK

(MUST BE COMPLETED IN INK OR TYPEWRITTEN)

M 1655-1
REV. 8-72

DATE: August 31, 1973

ACCOUNT NO.: M 40746 — $3,970.81

$

$

AMOUNT OF CHECK: $3,970.81

ISSUE CHECK TO:
NAME: Feist & Feist
STREET ADDRESS: 58 Park Place
CITY AND STATE: Newark, New Jersey
ZIP CODE: 07102

EXPLANATION:
Staten Island Mall Store No. 201

Taxes 8/2/73-8/31/73 -- $ 553.99

Rental 8/2/73-8/31/73 -- $1,449.99

Rental 9/1/73-9/30/73 -- $1,956.83

MAIL TO:
Above

HOLD CHECK FOR:
EXT. NO.

REQUESTED BY

APPROVED BY

PLANT CODE (CHECK ONE)

- R [X] FT. WAYNE CONSUMER PRODUCTS
- W [ ] FT. WAYNE G & I
- Z [ ] FT. WAYNE CORPORATE
- A [ ] ANDREWS
- C [ ] JOHNSON CITY
- J [ ] JEFF. CITY
- G [ ] GREENEVILLE
- H [ ] ARDEN
- I [ ] SELMER
- K [ ] BAKER FURN.
- L [ ] LENOIR
- T [ ] TORRANCE
- P [ ] GAC
- V [ ] MORRISTOWN INC. PARK
- S [ ] LASALLE DESIGN
- M [ ] MX SYSTEMS
- N [ ] MX INT'L INC.
- [ ] _____

BELOW FOR ACCOUNTING USE ONLY

DUE DATE
REFERENCE NO.
ACCOUNTING APPROVAL
VENDOR NO.

DEFT EX 19 FOR ID
R. INGORS 10/1/75

PlF's Ex 24

NOTED N.R.

E242
Trial Exhibit 24

(INTEROFFICE COMMUNICATION)

Magnavox

TO: Mr. H. E. Grenesko DATE: August 23, 1973 FROM: John F. Kelly

COPIES TO: SUBJECT: Staten Island Mall Lease

This letter will notify you that the Mall opened on August 9, 1973 and we are obligated to pay rent from that date. I have already given you the rent figure for the period from August 9 to August 31; however, beginning September 1, 1973 and on the first of each month thereafter, minimum rent payments of $1956.83 should be made to Feist & Feist, Managing Agent, Staten Island Mall, 58 Park Place, Newark, New Jersey 07102.

As we discussed, we will withhold any further payments of Tax Rent until we have received a more detailed explanation from the Landlord. I will inform you of utility figures and maintenance figures to be paid when I receive that information from the Landlord.

Please contact me if you have any questions.

John F. Kelly

/mm

STATEN ISLAND MALL
TAX STATEMENT
FOR THE PERIOD 8/9/73-1/31/74

TENANT MAGNAVOX STORE NO. 201

Real estate taxes for period 8/9/73-1/31/74	$324,699.58
Real estate taxes per month	$56,305.96
Floor space of Demised Premises (Square Feet)	3,599
Floor space of all leased or occupied space in Shopping Center (Square Feet)	250,000

Tenant Monthly Tax Rent:

3,599 / 250,000	x	$56,305.96	=	$ 810.58
3,599	x	$.02083*	=	74.97
Monthly Tax Rent				$ 735.61

Tax Rent 8/9/73-8/31/73:

$ 735.61	x	.7667	(23/30)	$ 563.99

* Landlord's share of real estate taxes (1/12 x $.25 = $.02083)

E244
Trial Exhibit 24

Staten Island Mall

Feist & Feist
Managing Agents
58 Park Place, Newark, N. J. 07102
Telephone: 201-643-8500

August 6, 1973

Magnaleasing, Inc.
1700 Magnavox Way
Fort Wayne, Indiana

Re: Staten Island Mall
Magnaleasing, Inc. Lease

Gentlemen:

Reference is made to the lease ("Lease"), dated May 4, 1973, by and between Staten Island Mall, as Landlord, and Magnavox, as Tenant, covering store number 201 in Staten Island Mall, Staten Island, New York.

Pursuant to Section 4.5 we are enclosing herewith a Tax Statement estimating taxes payable for the period 8/9/73-1/31/74. Therefore, upon the Commencement Date and until such time as there shall be a further adjustment of Tax Rent pursuant to Section 4.5 of the Lease, the Tax Rent is $ 735.61 per month payable in advance on the first day of each calendar month.

All terms used in this letter that are defined in the Lease shall be deemed to be defined in this letter.

Very truly yours,

STATEN ISLAND MALL
BY: BLACKFRIARS REALTY CORP.
(A JOINT VENTURER)

By Donald E. Faughnan

DONALD E. FAUGHNAN
CONTROLLER

Paid 8/9 - 8/31 - 1447.99

Mr. H. E. Grenesko

E245
Trial Exhibit 24

THE Magnavox COMPANY

Cable Address: Magnavox Telex 023-2442 TWX 810-332-1503
FORT WAYNE, INDIANA 46804

August 23, 1973

Mr. Donald E. Faughnan
Controller
Staten Island Mall
58 Park Place
Newark, New Jersey 07102

Dear Mr. Faughnan:

Re: Staten Island Mall
Magnaleasing, Inc. Lease

This will acknowledge receipt of your letter of August 6, 1973 regarding the adjustment of Tax Rent pursuant to Section 4.5 of our Lease.

I have instructed our Controller to pay the first month's Tax Rent as it has been billed to us; however, I will withhold any future Tax Rent payments until I have an explanation from your Company as to (1) a more complete analysis of your estimate of Real Estate taxes for the period August 9, 1973 to January 31, 1974; (2) how many square feet of floor space are now not occupied or leased, for which we are assuming the tax burden; and (3) an explanation of why your Leasing Agent, Mr. George Kirtland, represented to me on January 4, 1973 that our estimated share of Real Estate taxes for this facility would be approximately $1.00 per square foot.

I can understand that Mr. Kirtland may not have had the final figures at that time; however, it is certainly ridiculous that the actual charge would be $2.70 per square foot rather than the $1.00 per square foot quoted to me. I am sure other Tenants must be having the same problem.

Very truly yours,

John F. Kelly
Corporate Director
Real Estate

/mm

(INTEROFFICE COMMUNICATION)

Magnavox

TO: A. B. Hausfeld DATE: August 22, 1973 FROM: H. E. Grenesko

COPIES TO: SUBJECT: Staten Island Mall

There's an old saying, Tony, "When trouble comes, it comes in bunches." That's certainly our experience with Staten Island Mall.

Jack Kelly presented me with a statement from Blackfriars Realty Corporation yesterday for current taxes due and recommended we include rental through August 31 in the same check. Tax liability, however, has gone from $1.00 per square foot per annum to $2.45. In dollars, this means our original estimate of $3,599 will have to be increased to $8,817.55 or a difference of $5,218.55.

A letter of protest is being prepared by Jack, and he has talked of the possibility of a tenants suit against the landlord. What else could happen?

Hank Grenesko

/eet

E247
Trial Exhibit 25 - August 23, 1973 letter from John Kelly to Donald E. Faughnan

Exhibit 48

THE Magnavox COMPANY

Cable Address: Magnavox Telex [illegible] TWX 810-332-1503
FORT WAYNE, INDIANA 46804

August 23, 1973

Mr. Donald E. Faughnan
Controller
Staten Island Mall
58 Park Place
Newark, New Jersey 07102

Dear Mr. Faughnan:

Re: Staten Island Mall
Magnaleasing, Inc. Lease

This will acknowledge receipt of your letter of August 6, 1973 regarding the adjustment of Tax Rent pursuant to Section 4.5 of our Lease.

I have instructed our Controller to pay the first month's Tax Rent as it has been billed to us; however, I will withhold any future Tax Rent payments until I have an explanation from your Company as to (1) a more complete analysis of your estimate of Real Estate taxes for the period August 9, 1973 to January 31, 1974; (2) how many square feet of floor space are now not occupied or leased, for which we are assuming the tax burden; and (3) an explanation of why your Leasing Agent, Mr. George Kirtland, represented to me on January 4, 1973 that our estimated share of Real Estate taxes for this facility would be approximately $1.00 per square foot.

I can understand that Mr. Kirtland may not have had the final figures at that time; however, it is certainly ridiculous that the actual charge would be $2.70 per square foot rather than the $1.00 per square foot quoted to me. I am sure other Tenants must be having the same problem.

Very truly yours,

John F. Kelly
Corporate Director
Real Estate

/mm

E248
Trial Exhibit 26 - April 30, 1974 letter from John F. Kelly to John Feist

~~Exhibit 26~~

cc: W. R. Cline, G. A. Michaelson, H. E. Grenesko, Morris Gliklich

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 30, 1974

Mr. John Feist
Feist & Feist
c/o Staten Island Mall
58 Park Place
Newark, New Jersey 07102

Dear Mr. Feist:

Re: STATEN ISLAND MALL

I feel it is time to bring to your attention numerous serious problems associated with our tenancy in the Staten Island Mall. These problems have all been addressed to your representatives in the past but have been largely ignored. So that you will realize that our concerns are well founded, I will detail the incidents which have caused the problems:

MALL SECURITY

1. October 1973 - Our carpet was torn up from the floor and stolen. Cost $1,333.64.

2. November 1973 - An entire section of a modular wall (shelving included) was dismantled and carried away. Cost $442.05.

3. January 1974 - Two coach lanterns were ripped off our store front and stolen. Cost $148.67.

BUILDING, PARKING LOT AND MALL MAINTENANCE

1. The roof above our store has leaked since the store opened. In spite of numerous complaints to your representatives, it still leaks and to date has resulted in damage to our fixtures and merchandise in excess of $1,000.

JIT EX 26

(Building, Parking Lot and Mall Maintenance cont.)

2. Mall maintenance has been poor and we have recently been assessed at a rate of $2.58/sq.ft. for this service when it was represented to be 60¢/sq.ft. by your leasing agent. This is over four times as much as we are being charged in our other Malls. This is an additional cost of $7,179.68/year, which is utterly absurd.

3. The parking lot is poorly maintained and supervised.

UTILITY CHARGES AND TAXES

1. For two months Mr. Cline, our Director of Facilities, has been attempting to get a reasonable explanation of our utility bill to no avail.

2. We entered into this lease based on the representation by your representatives that taxes would be $1.00/sq.ft. In fact, they have been $2.70/sq.ft. Cost $6,133/year.

MISCELLANEOUS

1. In spite of representation by your employee that most stores would be open at the Grand Opening, this Mall is still 30-40% vacant. I have never seen a major Mall with so many vacancies.

2. Merchants' Association Advertising -- Advertising is being directed at the New Jersey market while the obvious Mall customers, residents of Staten Island, are being largely ignored.

We have made every effort possible to promote sales for this store:

1. We spent over $100,000 to construct and decorate the store. (I was told by one of your people that you said it was one of the most attractive stores you have ever seen.)

2. The store is operated by one of our largest and most successful dealers and a recognized national authority on retailing our type of goods and services.

3. Both Mr. Gliklich and The Magnavox Company have spent considerable excess funds on advertising and sales promotion.

In spite of our efforts the results have been disastrous. The first quarter sales were $56,845 versus projected sales of $136,000. Due to this and the increased expenses detailed previously in this letter, both Magnavox and our dealer, Mr. Gliklich, suffered substantial financial losses in every month in which the store has been open.

We did not have these problems in other stores. Of the 14 Regional Mall locations opened last year, the Staten Island Store has incurred the highest occupancy expenses and generated the lowest sales. This cannot be blamed on the energy crisis since a store the same size, which we opened at the same time in Bergen Mall, is doing four times as much business as the Staten Island store; Mr. Gliklich's other four stores, none of which is located in Malls, all out-produce this one substantially.

In further effort to determine if there was anything more we could do to increase our sales, and to make sure our complaints were justified, we interviewed a number of other tenants. Without exception, they had the same complaints about Mall security, maintenance and charges, and the lack of cooperation from the Landlord's representatives. Further, they indicated that sales were extremely poor and that they were sustaining substantial losses.

Please advise what action you intend to take to:

1. Provide some Mall security.

2. Reimburse Magnavox for losses sustained as a result of the incompetence of your security force.

3. Fix the roof.

4. Reimburse Magnavox for damage caused by the roof leak and your failure to repair.

5. Improve Mall and parking lot maintenance and supervision.

6. Provide Mr. Cline with a reasonable explanation of the utility charges.

7. Adjust our taxes and common area maintenance costs to the level represented by your leasing agent.

8. Begin meaningful promotion by the Merchants' Association designed to bring in Staten Island residents.

9. Reduce your vacancies to an acceptable level.

10. Provide us with a temporary rental reduction so that we can stay in business until you can straighten out these problems and increase Mall traffic so that it is possible for a small tenant to exist.

Because of the gravity of the situation, time is of the essence. If you desire, I will be happy to meet with you at your earliest convenience and discuss matters further.

Very truly yours,

John F. Kelly
Corporate Director,
Real Estate

/mm

E252
Trial Exhibit 26

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S).
REQUIRED FEE(S) PAID.

☐ Show to whom, date and address where delivered ☐ Deliver ONLY to addressee

RECEIPT

Received the numbered article described below.

REGISTERED NO. 81782

CERTIFIED NO.

INSURED NO.

DATE DELIVERED 2 1974

(1) SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*) FEIST & FEIST

(2) SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Alma Silvestri

(3) SHOW-WHERE DELIVERED (*only if requested*)

455—16—71848-11 347-198 GPO

E253
Trial Exhibit 26

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

Print your name and address below. If you want to restrict delivery, or to have the address of delivery shown on this receipt, check block(s) on other side. Moisten gummed ends and attach this card to back of article.

RETURN TO

John F. Kelly, Corporate Director, Real Estate
The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

POD Form 3811 Apr. 1968 (35-16-71540-1)

E254
Trial Exhibit 27 - June 5, 1974
letter from Morris Gliklich to
John Kelly

Executive Offices: 911 W. ST. George Avenue, Linden, N.J. 07036 - (201)486-9080

June 5, 1974

Mr. John Kelly
Corporate Director of Real Estate
The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

Reference: Staten Island Mall

Dear John:

Enclosed please find additional copies of increases in utility charges retroactive to March 1, 1974.

Also the following is the address of the Staten Island Attorneys engaged by tenants;

Malinari, Di Lillo, Lasser
88 New Dorp Plaza
Staten Island, New York

The gentlemen handling the case is Mr. Lasser. We have contributed $100.00 to the retainer of this attorney, however, we have also pointed out the actual legal work on our behalf is being done by you. And the contribution was strictly a token of cooperation in this case.

Very truly yours,

Morris Gliklich

MG:tcd

Enclosures

PIF EX 27

E255
Trial Exhibit 27

Staten Island Mall

Feist & Feist

Management Agents

58 Park Place, Newark, N. J. 07102

Telephone: 201-643-8500

May 28, 1974

NOTICE TO ALL TENANTS:

The attached invoice reflects increases in your Utility Charge due to rate increases granted to Consolidated Edison effective March 8, 1974 and Brooklyn Union Gas Company effective March 1, 1974. It also includes increased fuel adjustments for both as of March, 1974.

The increase in HVAC fuel charges by Brooklyn Union Gas is approximately 11%. The electrical demand charge has increased by 14% and the energy charge has increased for most tenants by approximately 15%. The most significant increase, however, is in the electrical fuel adjustment which has increased to 4½ times the November, 1973 adjustment. There will be an additional bill forwarded shortly covering fuel adjustments for the period from November, 1973 through February, 1974.

We know that you share our concern over the tremendous increases in electrical costs and we would ask you to join us in a concerted effort to significantly reduce electrical usage and thereby control utility costs.

Very truly yours,

Mindy Walsky

FEIST & FEIST, AS
MANAGING AGENTS
FOR STATEN ISLAND MALL

attachment

E256
Trial Exhibit 27

STAT[illegible] ISLAND MALL
CHANGE IN UTILITY CHARGE

TENANT MAGNAVOX Date: [illegible] 24, 1974 STORE# 201

STORE AREA 3,626 SQ.FT. CONNECTED LOAD 29.0 KW

Utility Cost per square foot as at 11/1/73 2,5626

Revised Utility Rate & Fuel Adjustment as at 3/1/74

(A) Demand Charge @ 7.24 per KW 209.96

(B) Energy Charge
Consumption 29.0 KW x 325 hrs. = 9425
Bases of Charge:
.0377 for first 9000 KWH 339.30
.0305 for next 21,000 KWH 12.96
.0268 for next 120,000 KWH

(C) Electric Fuel Adjustment
9425 KWH x .022539 212.43

(D) Sales Tax @ 7% 54.23

Total Monthly Cost 828.88

Annual Electric Cost
per square foot 828.88 x 12 ÷ 3626 = 2.7431

Administration Expense involved .0855

Total 2.8286

Electric Cost per square foot as of 11/1/73 1.8877
Increased Electric Cost per square foot per year .9409
HVAC Fuel Rate Change & Adjustment as of 3/1/74 .0325
Revised Utilities Charge per square foot per year 3.5360

1 - Revised Monthly Utilities Charge - Effective June 1, 1974

9.5360 x 3626 ÷ 12 $ 1068.46

2 - Due now for the period 3/1/74 - 5/31/74 *

Billable for 3/1/74 - 5/31/74 (3 months) 3,205.38

Billed for 3/1/74 - 5/31/74 2,332.68

Due Now $ 872.70

* Revised Utility Charges for the period 11/1/73 - 3/1/74 will be forthcoming.

E257
Trial Exhibit 28 - June 20, 1974
letter from John Feist to
John F. Kelly

File

Exhibit 2/9

Staten Island Mall

Feist & Feist
Managing Agents
58 Park Place, Newark, N. J. 07102
Telephone: 201-643-8500

June 20, 1974

..., John F. Kelly
..rporate Director, Real Estate
... Magnavox Company
..t Wayne, Indiana 46804

Re: Staten Island Mall

..ar Mr. Kelly:

..have received and carefully reviewed your letter of June 14th together ..th the enclosed actual and projected profit and loss statements.

..am deeply concerned about the difficulties that you are presently ex-..eriencing at the Mall. I cannot, however, agree with your statement ..at our representatives mislead your company. It is my feeling that a ..company such as yours should be fully aware of all situations that it is ..becoming involved in prior to its involvement.

..know that you and several other tenants are currently experiencing hard ..imes but we are not in a position to grant you the kind of relief that ..ou are seeking nor can we allow you to close your store.

..s you know, the primary reason for bringing chains into shopping centers ..s stability. I must assume that Magnavox lives up to its obligations.

Sincerely,

John Feist

JOHN A. FEIST
Vice President

..AF:mg

..c: Lawrence D. Eisenberg, Esq.

PLF EX 28

E258
Trial Exhibit 29 - August 19, 1974 memo from John Grogan to John Feist

John Feist

cc: Irving Feist and Larry Eisenberg

John Grogan

August 19, 1974

Common Area Expenses 8/9/73 - 1/31/74.

The attached schedule of Common Area Expenses from the opening date of the Mall through January 31, 1974 totals $340,548.36. The schedule has been checked by S. D. Leidersdorf and Company and, therefore, represents the actual costs of Common Area Expenses for the period indicated.

If you would annualize the Common Area Expenses for this initial period, the total Common Area Expenses would exceed $900,000 or approximately $2.10 a square foot based upon the rentable square footage in the entire Mall. However, since the Mall was only approximately 50% occupied during that time, the square foot costs billable to the tenants in possession would be about $4.20 a square foot.

Before we backbill any tenants for their initial occupancy, we must discuss this.

Please arrange a meeting in this regard at your convenience.

bcc: Gloria Cardinal
Edmund Callahan

Pl Ex 29

PLF

E259
Trial Exhibit 29

STATEN ISLAND MALL

COMMON AREA EXPENSES

8/9/73 - 1/31/74

1.	Cleaning Mall	$ 40,311.70
2.	Exterminating	823.90
3.	Gardening-Landscaping	17,197.29
4.	Insurance	4,253.81
5.	Mechanical	34,172.89
6.	Misc.	1,316.21
7.	Protection	107,529.13
8.	Rental Equipment	1,712.86
9.	Salaries	19,697.43
10.	Rubbish Removal	40,082.55
11.	Repairs	—
12.	Snow Removal	23,357.46
13.	Supplies	2,646.57
14.	Taxes-Payroll	2,208.47
15.	Electric	31,734.34
16.	Gas	10,527.52
17.	Water	2,976.23
		$340,548.36

E260
Trial Exhibit 29

36 months

Signed By
Approved By

Sand Island Mall
Common Area Expenses
5/1/78 - 4/31/79

	Total	Annualized ÷13 x 36	Original Budget	
Janitorial	103,120	111,634 + 20,924	250,000	LIGHT
[illegible]	8,330	2,987	1000	
[illegible]	171,729	47,618	23,000	HIGH
Insurance	42,351	11,778	20,000	
Maintenance	317,183	94,000 +		
Misc	13,121	3,600	3600	
Payroll	1,056,913	297,747	209,000	
Rentals Equip	17,116	4,740 +		
Salaries	124,763	34,541	30,000	
Security Services	402,155	110,957	96,000	HIGH
Repairs			50,000	
Snow Removal	73,357 1/6	64,677	37,500	
Supplies	16,157	3,348	3000	HIGH
Tax Consult	2,057	6,114	1500	
Electric	317,336	87,871	135,000	
Gas	105,755	29,149		
Water	29,763	8,241		
	3,405,836	944,971	910,100	

*Adj

1) 31% Common Area - 69% Common Area
2) 70% Common Area - 30% Unitized
3) 50% Common Area - 50% Unitized
4) Other
5) 1111 Common Area - 1001 Unitized
6) 30% Common Area - 70% Unitized

Ex Hrs Commercial

5/1/78 - Assume 50%

$944,971

$ 472,485.50 ÷ 4.53 ft

E261
Trial Exhibit 29

Approved By

Sunset Island Mall
Common Area Expenses
8/9/73 – 1/31/74

	Total	8/9/73–11/30/73	Dec 1973	Jan 1974
Cleaning - Mall	$403172	69950	$1024302	131597
Engineering	8390	615	1375	7490
Gardening & Landscaping	1719729	1260529	400750	58150
Insurance	455381	166880	91533	167068
Mechanical	3417289	2000158	683246	733785
Misc	13162	13162	—	—
Protection ?	195000		95000	95000
	1056913	760835	146578	149350
Rental Equip	17146	11146	—	58546
Salaries	1790763	1290078	359895	319770
Rubbish Removal ?	409255	301601	42184	56070
Repairs	—	—	—	—
Snow Removal	2332746	2049279	175468	283068
Supplies	26457	21530	4667	—
Tax-Payroll	27057	19623	1527	9997
Electric	3173434	1900391	611234	659809
Gas	1052754	791639	135000	136113
Water	29763	25764	1439	2560
	34054836	16878236	8156367	5920237

*Adj

BEST COPY AVAILABLE

E262
Trial Exhibit 29

(1) 35% Common Area - 65% Owners Cost
2) 70% Common Area - 30% Utilities
3) 50% Common Area - 50% Owners Cost
4) Mixed
(5) .1111% Common Area - .8889 Utilities
6) 30% Common Area - 70% Utilities

5 x 3 mos

13/3 - 342,548.36 - 1114541.92

36/3 - 943,057.00

TT X 30

bility?

Q I mean the individual who was responsible for the whole project, the topman, so to speak, the man to whom everybody ultimately reported and who gave the orders down the line.

MR. NEWMAN: You are asking several questions there.

MR. BRANE: I will ask it --

MR. NEWMAN: If you want the topman, you can ask that. If you want --

Q Obviously, you were the president of the company. So, obviously, in a sense --

A I'm the president of the company and my son is vice-president of the company which is what I've already told you.

Q In that sense you were the topman. You testified, "I was not involved in the day to day." Who was the topman that was involved in the day to day operation?

A It all depends what you are talking about. When you talk about top, day to day what?

Q Was there a man who on a day to day basis supervised the entire project?

A I would say that my son, John, was in charge

of the project.

Q Do you have a financial department of some kind?

A Financial or mortgage or bookkeeping?

Q Do you have a bookkeeping department?

A Yes, certainly.

Q Do you also have a mortgage department?

A Yes.

Q Whenever estimates are done of any kind at Feist & Feist, what department does them? Whatever cost estimates are done, what department does them?

A The department that is interested.

Q Let me show you a document that is marked Plaintiff's Exhibit 2 for identification to the Eisenberg deposition, and let me just state for the record that what the document is is a document labeled "Staten Island Mall, Additional Charge Based on Estimated Real Estate Taxes for the Period 2/1/1974 to 1/31/1975."

Have you ever seen --

A This is not the same statement that --

Q I know. I am withdrawing the question. It is a different document.

A Yes.

Q Have you ever seen that document before?

DEFENDANTS' TRIAL EXHIBITS

Trial Exhibit D, Record of Shopping Center Negotiation
Dated January 4, 1973

D

2/1. /3

Exhibit 30

RECORD OF SHOPPING CENTER NEGOTIATION

Meeting No. 2

Date January 4, 1973

Name of Mall Staten Island Mall

Address Richmond Avenue & Richmond Hill Road

City Staten Island, New York

DEFT'S EXHIBIT 3 FOR IDENT.
DATE 9/30/81

Developer Feist & Feist

Address 58 Park Place

City Newark, New Jersey 07102 Phone 201-643-8500

Developer Negotiator George W. Kirtland

Magnavox Negotiator John F. Kelly

Mall Land Area _____ Acres Mall Retail Area 1,800,000 Sq. Ft.

Total Stores 140

Major Tenants, Size of Units

Macy's (233,530 sq. ft.), Sears (188,000 sq. ft.)

Lease Proposal

Size of Proposed Store 3608 sq. ft. (122 x 29.6')

Location of Proposed Store 2nd Floor next to Macy's. Space 201.

Base Rent $23,452/yr. ($6.50/sq.ft.) Percentage 4% of sales over $586,300

Mall Maintenance $21[illegible].50 (6[illegible] sq.ft.) Estimated Real Estate Taxes $3608/yr. ($1.00 sq.ft.) Estimated

Estimated Cost to Fixture $60,000 Fixturing Allowance $7216 + $10,824 additic to be deducted from 1/c of Percentage Rent.

Merchants Assn. $721.60 (20¢ sq. ft.) + 20¢ sq. ft. opening assessment. Other Charges

Landlord's Construction Obligation Shell

Term of Lease 15 years

Proposed Opening Date August 1973

Recommend: Acceptance X Rejection

Comments: 10% base rental increase when third department store opens.

10% base rental increase when fourth department store opens.

E266

Trial Exhibit D

Trial Exhibit E, Handwritten Memo re December 5 Meeting

DEFT'S EXHIBIT 5 FOR IDENT.
DATE 9/30/75 AP

Staten Island — Dec. 5 meeting Kelly + Mike.

We will file suit, Jack thinks we will lose.

Get Morris to pay us — so we know what happens.

No sales for Aug. Sept. Oct. Nov.

Allocation of Morris expenses to this business is wrong

1. Get a handle on all expenses and sales by having Morris report all sales, and ask landlord ~~at least~~ send all bills, to us.

2. Ask Dick Clearwater to research and suggest new tenant or whatever by April 1.

3. Ask for reserve for 1974 — $30,000 plus construction write-off.

Def. Ex. E for ID.

E268

Trial Exhibit E

ENCLOSED MALL HOME ENTERTAINMENT CENTER — Mall _____ Type Lea[illegible]
SALES AND OPERATING EXPENSE FORECAST — Date _____ Scheduled Open[illegible]

PIOJ.

Line	Name of Account		Total Year Forecast Original		Revised
1	SALES (product only)	3 MOS	[illegible]		[illegible]
2	COST OF SALES	Actual	37 546		[illegible]
3	GROSS PROFIT (Inc. Markdowns) (8)		12 806	[illegible]	[illegible]
4	SELLING EXPENSES: (Program)				
5	Salesmen (7)	F&V	8463		33852
6	Manager (2)	F&V			
7	TOTAL SELLING COMPENSATION (Li 5-6)		8463		[illegible]
8	Advertising	V	3025		[illegible]
9	Merchants Association	F	160		724
10	TOTAL SELLING EXPENSES (Li 7-9)		11 648		41 074
11	EMPLOYMENT EXPENSES:				
12	Salaries & Wages -- Office (3)	F	1520		[illegible]
13	Salaries & Wages -- Delivery (4)	F	703		2740
14	Payroll Taxes	SF	447		[illegible]
15	Workman's Compensation Insurance	SF	75		[illegible]
16	Retirement Plan Contribution	SF			
17	Other Employee Benefits	SF	303		[illegible]
18	TOTAL EMPLOYMENT EXPENSES (Li 12-17)		3058		12 160
19	SEMI-FIXED EXPENSES:				
20	Company Vehicles -- Exp. (5)		340		[illegible]
21	Supplies -- Office, Store, Shop		138		[illegible]
22	Postage		31		[illegible]
23	Telephone & Telegraph		1215		[illegible]
24	Travel & Entertainment				[illegible]
25	Memberships, Dues, & Subscriptions		150		[illegible]
26	Legal, Auditing, & Collection Expense		72		[illegible]
27	Bad Debts		560		[illegible]
28	Interest, Inventory Financing Expense		385		[illegible]
29	Miscellaneous Expenses		431		[illegible]
30	TOTAL SEMI-FIXED EXPENSES (Li 20-29)		3322		[illegible]
31	FIXED EXPENSES:				
32	Rent		8055		32220
33	5% Lease Guaranty Fee		[illegible]		[illegible]
34	Heat, Light, Power, & Water		2769		[illegible]
35	Common Space 2.5% of [illegible]		1768		[illegible]
36	Amortization -- Leasehold Improvements		[illegible]		11 220
37	Warehouse		301		[illegible]
38	Taxes (property) 2.78 of [illegible]		453		[illegible]
39	TOTAL OCCUPANCY EXPENSES (Li 32-38)		17 [illegible]		[illegible]
40	Insurance (Exc. Bldg. & Employee) (5)		600		[illegible]
41	Depreciation (Other than Bldg. & Imp.) (5)				
42	Taxes & Licenses (Exc. Payroll & R.E.) (5,6)				
43	TOTAL FIXED EXPENSES (Li. 39-42)		17 [illegible]		[illegible]
44	TOTAL OPERATING EXPENSES (Li 10, 18, 30, 43)		[illegible]		[illegible]
45	NET OPERATING PROFIT (Li 3-44)		[illegible]		[illegible]
46	Other Income -- Cash Disc. Financing, Rebate (7)		[illegible]		[illegible]
47	TOTAL (Li 45 & 46)		[illegible]		[illegible]
48	Other Deductions (Credit Cards, Etc.) (7)				
49	PROFIT BEFORE OTHER COMP. & TAXES (Li 47 & 48)				

AMORTIZATION is $_____ minus $_____ (L/L allow.) minus $_____ (d'pymt.)
$_____ (balance) at _____% interest over ___ year term.
GROSS MARGIN ADJUSTMENTS: 1% higher = $_____ net; 1% lower = $_____ net.
ANNUAL RETAIL SALES PER SQUARE FOOT . . . $_____.
BREAKEVEN POINT _____.
DATE SUB-LEASE SIGNED _____. DATE MASTER LEASE SIGNED _____
DATE OF LEASE EXPIRATION _____ DATE F & C TO BE COMPLETED _____

E269

Trial Exhibit F, July 1, 1974 Memo From John F. Kelly To G.A. Michaelson

13-27-A

(INTEROFFICE COMMUNICATION)

Magnavox

TO: Mr. G. A. Michaelson DATE: July 1, 1974 FROM: John F. Kelly

COPIES TO: / Mr. T. M. Hafner SUBJECT: Staten Island Mall

DEFT'S EXHIBIT 6 FOR IDENT.
DATE 9/30/85

In a letter dated June 20, 1974 Mr. John A. Feist, representing our Landlord in Staten Island Mall, has refused to provide us with any relief from this lease.

I have had a couple of meetings with Tom Hafner and he has discussed the matter with the law firm he uses in New York City. Our belief is that we do not have a strong enough case to recommend legal action. Tom is continuing his research but it is unlikely that this position will change.

On the assumption that Morris will close the store and try to get out of the deal as cheaply as possible (I believe this is a very safe assumption), I believe we have three options: 1) Taking legal action to require Morris to live up to the terms of the lease; 2) closing the store and attempting to sublease it to some other organization; 3) subsidizing the operation of the store, either under Morris or some other dealer whom you feel could get maximum production out of the unit.

Under the terms and conditions of the lease and our agreement with Morris Gliklich, we can require him to continue operation of this store. As a practical matter, however, this provision would be most difficult to enforce since he could bankrupt Regal of Staten Island, Inc. (the corporation that operates this particular store), and our recovery would be limited to $5700 down payment for fixturing costs, his $2500 deposit and $15,000 guarantee from his parent corporation. Since Morris has made no fixture payments to us at this time, and since I believe he may be in arrears in some of his payments to the Landlord, the recovery in this instance would not be great.

If we close the store we will still be faced with the following costs: Rent $23,452/year; Merchants' Association $722; Common Area Maintenance $9285; Taxes $9717; Electricity $9234; making total annual payments of $52,410 plus whatever costs would be involved in moth-balling the store and maintaining it in that state. It is

RECEIVED
JUL 3 1974
MAGNAVOX LAW

Def. Ex. F Cont'd.

E270

Trial Exhibit F

Mr. G. A. Michaelson July 1, 1974

possible we could recover some of our investment by removing some of our trade fixtures; maximum recovery for this would be approximaterly $20,000.

Concurrently the closing of the store we should attempt to sublease it. In order to do this we would need the approval of the Mall management and would probably lose our entire fixture investment.

Due to the various problems associated with this Mall, leasing has pretty much come to a standstill. However, our space would probably be more attractive to a prospective tenant than a new location, since the basic store construction has been complete and he could open for business with a relatively small investment. The Landlord in return for his permission to sublet would require us to remain liable for the performance of the lease, so that if the new tenant defaulted we could end up getting the store back.

Finally, we could continue the operation of the store by subsidizing a Magnavox dealer to operate it. I am attaching a first year's sales projection prepared by Hank Grenesko. As you can see, it indicates a loss of approximately $76,000. If we subtract the cost of amortizing the leasehold improvements, the loss becomes $65,000. This loss would be offset by the profit to Magnavox realized on the sale of products to the store and could possibly be further reduced by improved sales and margins.

Please let me know if you need any further information and what, if any, further action you wish me to take. I have advised neither Morris Gliklich nor Dale Kelly of my June 20 letter from Staten Island Mall, or our initial recommendation that we do not take legal action against the Landlord as this time.

Jim Kelly

John F. Kelly

/mm
Encl.

E271

Trial Exhibit G, July 10, 1974 Memo From G.A. Michaelson
To J.F. Kelly

13-21-A

File

J. F. Kelly

T. M. Hafner

July 10, 1974

G. A. Michaelson

Staten Island Mall

RECEIVED
JUL 11 1974
MAGNAVOX LAW
DEPARTMENT

9

FOR ID

10/9

Jack:

I have read John Feist's letter to you concerning the lease. I take exception to his statement, "It is my feeling that a company such as yours should be fully aware of all situations that it is becoming involved in prior to its involvement." This is a fine paraphrase of "let the buyer beware".

It seems inconceivable to me that there are no grounds on which we can move in relation to some of the charges in this lease. I am under the impression that certain representations were made to you concerning the taxes and utility expense. I cannot accept a position that there are no grounds for us to take some kind of action.

I am under the impression that Morris' business in the second quarter was better than his business in the first quarter and should provide us the basis for a new annual projection. It may be that, from Morris' standpoint, the problem of profit in relation to volume is not as serious now as it was earlier this year. Please check with Hank and review the projection.

None of the options that you suggest in the third paragraph of your letter are realistic options: 1) We cannot take legal action to require Morris to live up to the terms of his lease; 2) If we close the store and attempt to sublease it to some other organization, we will be sitting with a store which we cannot lease or with a large loss; 3) The proposal for subsidizing the operation indicates that we would have to plow some $76,000 a year into the lease.

I would suggest that you get together with Hank and make several analyses based on specifically what would happen if we closed the store and attempted to sublease it. Second, we need an analysis showing the break-even point because if we are losing $70,000 at a volume of $245,000, it would appear to me that this store still will not make a profit at $600,000.

Jack, the costs listed in the fifth paragraph of your letter are as follow:

Def. Ex. G for

E272

Trial Exhibit G

Page II
Mr. J. F. Kelly
July 10, 1974

Rent	$23,452
Merchants Association	722
Common Area Maintenance	9,285
Taxes	9,717
Electricity	9,234
Total Annual Payment	$52,410

This is not the cost information we had when we signed the lease. It has to represent some kind of misrepresentation. I cannot accept the fact that with all the legal advice we have we can be forced into a situation where we must accept such unrealistic costs.

Additionally, I would like to know what specific steps we are taking to preclude any future problems where we get one cost estimate and find out that the actual circumstances are something else.

Gerald A. Michaelson

GAM:lam

Trial Exhibit H, July 22, 1974 Memo From John F. Kelly To G.A. Michaelson

(INTERNATIONAL COMMUNICATION)

Magnavox

TO: Mr. G. A. Michaelson DATE: July 22, 1974 FROM: John F. Kelly

COPIES TO: Messrs. H. E. Grenesko
T. M. Hafner
D. L. Hamilton

SUBJECT: Staten Island Mall
Your Memo of 7/10/74

13-29-A

In my memo of July 1, 1974 to you I did not mean to imply that there was no legal action that could be taken in regard to some of the charges involved in this lease. In fact, 33 of the Mall tenants, including Morris Gliklich, hired an attorney and an accountant to attempt to do just this. However, increases in utility charges have been brought about by the energy crisis and the fantastic increases by Consolidated Edison Company which, of course, have been passed on to the tenants. When the lease was negotiated this problem was unforeseen. Even if the actions to reduce the common area maintenance and real estate tax charges are successful, this store will still lose money.

The only action that would get us off the hook would be against the Landlord for misrepresentation, seeking as a remedy the voiding of the lease and the recovery of funds lost in connection therewith. It is the opinion of Mr. Hafner, myself and the New York attorneys consulted by Mr. Hafner that such an action would not be successful. As we discussed, under the best of circumstances such an action is very difficult to maintain.

Pursuant to your letter and our discussion, I advised Hank Grenesko to prepare a new projection and breakeven analysis based on the most recent volume figures, and meet with Morris Gliklich's accountant to determine the actual cost of operating the store.

Since this lease we have taken any number of specific steps to alleviate such future problems:

1. Recognizing the fact that one of the most important ingredients in such a store is Dealer motivation, we changed our basic tactic of finding a location, then trying to find a Dealer. We now find the right Dealer first, then attempt to secure a location.

Doc. Ex. H Cont'd.

RECEIVED
JUL 29 1974
MAGNAVOX LAW DEPARTMENT

10

10/9 19 75

2. We are attempting to get limits placed on utility, tax and maintenance charges in leases we negotiate. In most cases, however, this has not been possible.

3. We have become more conservative in our sales projections and less conservative in our estimate of expenses.

4. We are dealing only with recognized, successful developers. (One of the problems in this particular situation was that although these people were experienced in the real estate business and had a good reputation as far as we could determine, when it came to actually developing a Regional Mall they did not know what the hell they were doing.)

5. To date this year leases have been signed for fifteen (15) Regional Mall locations. Magnavox has not guaranteed any of these leases, nor have Magnavox funds been invested in the fixturing of the stores, so that a failure of any of these locations would not result in any contingent liability to Magnavox.

As you can see from the attached letter from Mr. Eisenberg, Morris has not been paying his rent. To date the arrearage is over twice the amount of the security deposit with us. This, together with Morris's representation that he intends to cease operating the store unless some solution is reached, makes it obvious to me that this problem will not go away and we must act quickly to work out a solution.

I recommend that immediately upon your return from vacation you, Hank Grenesko, Tom Hafner, Dale Kelly and I meet with Morris to see if some kind of realistic alternative can be found to closing the store.

John F. Kelly

/mm

Trial Exhibit J, January 29, 1973 Letter From G.W. Kirtland To John F. Kelly

Staten Island Mall

Feist & Feist
Managing Agents
58 Park Place, Newark, N. J. 07102
Telephone: 201-643-8500

DEFT EX 14 FOR ID 75
8. [illegible] 10/9 19__

January 29, 1973

RECEIVED
JAN 30 1973
J. A. F.

Mr. John F. Kelly
Corporate Director
Real Estate Department
The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

Re: First Lease Draft
Magnavox
Staten Island Mall

Dear John:

Per the authorization of Mr. Dale Kelly today, attached you will find two (2) copies of the above subject. If you have any lease comments, please return same to me in writing, detailed by page number and article number by no later than February 12, 1973. Upon receipt, I will turn them over to our attorneys, Marshall, Bratter, Greene, Allison & Tucker, located at 430 Park Avenue, New York, New York at which time they will contact you for a finalization of the comments. Your contact at Marshall, Bratter, Greene, Allison & Tucker will be Mr. Larry Eisenberg.

I realize you are very busy, however, with an August opening date it is absolutely essential that we consummate this lease within the next three weeks.

I have indicated the tenant to be The Magnavox Co. If you request a subsidiary, then the parent company would have to guarantee this lease. This could be one of your requests.

Within the next few days you will be receiving from our construction department complete detailed plans on Room No. 201 so that you can immediately start your preliminary plans on this project.

Def. Ex J [illegible]

Trial Exhibit J

Staten Island

Mr. John F. Kelly
Magnavox Co.

January 29, 1973
Page 2

Welcome aboard to what we feel will be your leading volume Magnavox store in the metropolitan New York area.

Sincerely,

FEIST & FEIST

G. W. Kirtland
Associate

GWK:hm
enc.
cc: Mr. J. Feist
Mr. L. Eisenberg

Trial Exhibit K, February 12, 1973 Letter From John F. Kelly To George W. Kirtland

THE Magnavox COMPANY

RECEIVED
FEB 1573
FEIST & FEIST

Cable Address: Magnavox Telex 023-2442 TWX 810-332-150
FORT WAYNE, INDIANA 46804

February 12, 1973

DEFT EX 15 FOR ID.
R. JACOBS 10/9 19 75

Mr. George W. Kirtland
Feist & Feist
58 Park Place
Newark, New Jersey 07102

Dear George:

This letter is to inform you that we will be unable to meet your proposed deadline on the Staten Island Mall lease.

Frankly, this is the longest and most restrictive lease I have seen in some ten years of real estate experience, and we are still attempting to wade through it. We will make every effort to get it out the end of this week or the first of next week with our proposed changes.

Very truly yours,

J. F. Kelly

John F. Kelly
Corporate Director,
Real Estate

JFK/mm

Def Ex K for id.
rec.

~~Trial~~ Exhibit L, February 27, 1973 Letter From John F. Kelly To George Kirtland

THE **Magnavox** COMPANY

Cable Address: Magnavox Telex 023-2442 TWX 810-332-1503
FORT WAYNE, INDIANA 46804

February 27, 1973

RECEIVED
MAR 2 '73
FEIST & FEIST

Mr. George Kirtland
Feist & Feist
58 Park Place
Newark, New Jersey 07102

Dear George:

Re: Staten Island Mall

Enclosed please find our comments regarding the above referenced Lease.

Please excuse the delay; however, we have just really gotten our program organized and your Lease is one of the longest and most torturous I have ever had to wade through.

As of this date the Lessee will be Magnaleasing, Inc., a Delaware corporation, and the Lease will be guaranteed by The Magnavox Company.

Please advise if you need any further information.

Best regards,

Jack

John F. Kelly
Corporate Director,
Real Estate

JFK/mm
Encl.

Def. Ex. L for id.

E279

Trial Exhibit L

RECEIVED
MAR 2 '73
FEIST & FEIST

LEASE COMMENTS

Staten Island Mall
Staten Island, New York

Article I. Section 1.1.

Tenant: This should be Magnaleasing, Inc. The Lease will be guaranteed by The Magnavox Company.

Percentage Rent Periods: This should be Annual instead of Quarter-annual. Comment: Since our business fluctuates greatly, depending upon the season, quarterly Percentage Rent payments will not work; therefore, we would agree to pay Percentage Rent annually.

Permitted Uses: This should be changed to read: "For the retail sale, service and storage of Magnavox television, stereo components, radio and other items customarily found in a Magnavox Home Entertainment Center."

Days for Completion of Tenant's Work: We need 90 days.

Retail Restriction Limit: This entire section should be deleted. Comment: We cannot accept any type of radius restriction since we already sell to Macy's and other stores located within the four-mile restriction.

Article II. Section 2.1.

The following should be added at the end of the Section: "provided such changes do not materially affect Tenant's business."

Article III.

Section 3.1, Lines 4 and 5. Delete the word "proposed" from both lines.

Section 3.1, Line 7. Beginning with the words "the location" and ending with the words "in Exhibit C" (Line 9) should be deleted. Comment: We cannot agree to let you move our location without our permission.

(Article III cont.)

Section 3.1, Line 14. Beginning with the word "provided" and ending with the words "Section 3.3" (Line 18) should be deleted.

Section 3.1, Line 26. 10 days should be changed to 60 days.

Section 3.1, Last Line. The words "equally" and "and Tenant" should be deleted. Comment: If your Architect is going to decide all disagreements, you are going to have to pay for it. If you wish to have an independent Architect or our Architect do it, we will be happy to split the costs.

Section 3.2, Line 12, Page 4. 45 days should be changed to 60 days.

Section 3.3, Line 23. Tenant's work to be commenced within 30 days following Landlord's approval of Working Plans.

Section 3.4. This Section should be deleted in its entirety. Comment: We are an AAA-1 Company and this should be unnecessary.

Section 3.5, Subsection (i). Add at the end of this Subsection: "or if said default cannot be reasonably cured within 10 days Tenant is diligently attempting to cure."

Section 3.5, Subsection (ii). The word "reasonable" should be added between the words "to" and "architect's" on Line 3. Also on Line 3 the words "and attorneys'" should be stricken. Comment: Why do you need attorneys' fees to complete the work?

Section 3.5, Last Paragraph. This should be deleted in its entirety as was Section 3.4.

(Article III cont.)

Section 3.7. At the end of this Section should be added: "provided, however, that if Demised Premises are not delivered to Tenant on or before August 1, 1974, Tenant shall have the right to terminate this Lease with no further obligation."

Section 3.9, Line 4. The following should be stricken: beginning with the word "unless" to the close of the bracket (the word "Date") on Line 6. Comment: Since the improvements become your property when attached, we are not going to accept the obligation to remove them at the end of the Lease.

Article IV.

Section 4.3, Subsection C, Page 8. The words "approved by Landlord" (last line on this page) should be deleted. Certification by an independent CPA should be sufficient.

Section 4.3, Subsection D. This Subsection should be deleted and a clause substituted providing that we will pay Percentage Rent when our sales have exceeded $586,300.

Section 4.5, Subsection A, Line 6. The word "and" should be inserted between the words "imposed" and "become due and payable."

Section 4.5, Subsection A. At the end of this Subsection should be added: "together with Tenant's reasonable costs and attorneys' fees associated with the determination of the dispute."

Section 4.5, Subsection B, Line 16. We need 30 days notice; therefore, 10 days should be stricken and 30 days inserted.

(Article IV cont.)

Section 4.5, Subsection E, Line 4. The word "reasonable" should be inserted between the words "less" and "all."

Section 4.6, Line 2. The words "or the maximum rate of interest permitted by law, whichever is less," should be deleted.

Section 4.6, Line 3. Add "15 days after" between the words "the" and "due."

Article V.

Section 5.1, Line 12, Page 12. The following should be deleted: from the word "all" through the word "determine" (Line 13). Comment. Since we are paying for the maintenance of the Common Area, we are entitled to have some voice as to how it is maintained; therefore, to maintain it at the Landlord's sole discretion is improper.

Section 5.1, Line 16. The words "erect and lease or sell advertising space" should be deleted. Comment: Since we are paying for use of the Common Area and the Landlord elects to lease and sell advertising space thereon, the revenue therefrom should be credited toward the cost of maintaining said Common Area.

Section 5.1. The following words should be added at the end of this Section: "unless Tenant's business is materially affected."

Section 5.2, Line 21. The following should be deleted: from the word "Landlord" through the word "otherwise)" (Line 14). Comment: Since the Tenant is paying for the Common Area, and since basic consideration for this Lease is the knowledge that our customers will have convenient free parking, we cannot allow the Landlord to charge for this parking. Further, if there were charges for parking, such charges should be used to reduce the Common Area payment made by the Tenant.

Article VI.

Section 6.3, Line 5. The following should be added: "as long as such interruptions are not caused by Landlord's negligence and as long as Landlord is proceeding diligently to correct said impairment."

Section 6.4, Subsection A. Where the Landlord must be responsible for the expense for the Tenant to hook up to commercial utilities, if he decides to stop supplying them the Tenant should not be required to pay the charges twice.

Section 6.4, Subsection B, Line 14. This should be changed from 10 days to 30 days.

Section 6.4, Subsection B, Line 22. After the word "for" should be added "one-half by Landlord and one-half by Tenant."

Section 6.4, Subsection C, Line 13. After the word "by" should be added: "one-half by Landlord and one-half by Tenant."

Section 6.4, Subsection D, Line 4. The word "Tenant's" should be changed to "Landlord's." If the Landlord wants a survey he should pay for it.

Section 6.4, Subsection F, Line 3. We need 60 days advance notice of discontinuance of utilities.

Section 6.4, Subsection F, Line 1, Page 17. The following should be stricken: from the word "unless" through the word "possible" (Line 3).

Section 6.4, Subsection F(c), Line 7. The word "Landlord" should be substituted for the word "Tenant."

Article VII.

Section 7.1. The following should be added at the end of the Section: "unless such repairs shall be necessitated by Landlord's negligence."

Section 7.2, Line 7. The following should be stricken: from the word "to" through the end of the Section. Comment: This would give us absolutely no rights whatsoever. It would in effect negate the entire Lease as far as the Tenant is concerned.

Article VIII.

Section 8.1, Subsection B, Line 2. The following should be deleted: from the word "to" through the word "and" on Line 3. Comment: We cannot agree to this since we are subleasing to Dealers. We could change Dealers and the name of the store could also change.

Section 8.1, Subsection C. This Subsection should be deleted in its entirety. Comment: We will be subleasing this space to a Magnavox Dealer, since The Magnavox Company, by law, cannot operate a retail establishment in the State of New York. If the Dealer should leave town, there would be no way we could live up to this obligation. We would, however, agree to use all diligence to acquire another Dealer, and we could solve this problem as we have in other developments by giving developers the right to recapture upon 30 days notice if our store is closed for 90 days.

Section 8.1, Subsection I (iii). This should be deleted; we do not carry plate glass insurance. Furthermore, under this Section The Magnavox Company would also want the right to self-insure a portion or all of the required insurance.

BEST COPY AVAILABLE

(Article VIII cont.)

Section 8.1, Subsection J, Line 5. The following should be deleted: from the word "or" through the word "Premises."

Section 8.1, Subsection K. The following should be added at the end of the Subsection: "unless such damage or loss is caused by Landlord's negligence and is covered by Landlord's or other Tenants' insurance."

Section 8.1, Subsection L, Line 3. The word "all" should be deleted.

Section 8.1, Subsection L, Line 8. The words "or desirable" should be deleted.

Section 8.1, Subsection L, Line 18. The word "materially" should be deleted.

Section 8.1, Subsection L, Line 22. Beginning with the word "without" to the end of the sentence should be deleted and the following added: "Upon Landlord's entry, this Lease shall terminate and all payments of Fixed Minimum Rent, Additional Rent and any other obligations of Tenant shall immediately cease."

Section 8.1, Subsection O. The following should be deleted: from the word "Each" on Line 5 through the word "improvement" on Line 9. On Line 9 the word "such" should be deleted. Comment: Since the Landlord has the right to approve improvements, that is sufficient protection. Tenant should not also be required to remove these.

Section 8.1, Subsection O. The entire portion of this Subsection, beginning with the word "Any" on Line 18 to the end of the Subsection should be stricken.

Section 8.1, Subsection P. The first sentence should be stricken. The $100 initiation fee was not part of our business deal.

BEST COPY AVAILABLE

(Article VIII cont.)

Section 8.1, Subsection P, Line 7. The words "all of the" should be deleted. Comment: We cannot agree to participate in all of the activities of the Merchants' Association, since some could easily conflict with limits placed on us by the Federal Trade Commission.

Section 8.1, Subsection P(vi). The following should be added after the word "schedule" on Line 4: "unless such purchase is unlawful in Tenant's opinion."

Section 8.1, Subsection P(vi). The following should be added at the end of this Subsection: "and Tenant shall have no further obligation to continue its membership or any payment to said Merchants' Association."

Section 8.1, Subsection Q, Line 20. 10 days should be deleted and 30 days added.

Section 8.1, Subsection Q. On the next to the last line, Page 25, the words "materially and adversely" should be stricken.

Section 8.1, Subsection S, Line 5. From the word "to" to the end of the Subsection should be deleted. Comment: It would be absolutely impossible for The Magnavox Company to mention Staten Island Mall in all of our advertising in the New York City area.

Section 8.2, Subsection A. This entire Subsection should be deleted.

Section 8.2, Subsection C, Line 5. The following should be stricken: from the word "or" to the word "writing" on Line 7. Comment: Since we agree not to break any laws, that should be sufficient and this is unnecessary.

(Article VIII cont.)

Section 8.2, Subsection C, Line 9. The word "reasonable" should be inserted between the words "to" and "rules."

Section 8.2, Subsection C, Line 13. The following words should be stricken: from the word "or" after the word "nuisance" through the word "or" on the following line. Comment: As we sell televisions, phonographs, radios and amplifiers, there is no way we could operate our business so that these things could not be heard or experienced outside the Demised Premises. We will operate them in a manner so as not to create a nuisance, however.

Section 8.2, Subsection F. This Subsection should be deleted. We need the right to assign this to a Magnavox Dealer, since by law The Magnavox Company may not operate a retail establishment.

Section 8.2, Subsection G. This Subsection should be deleted. We will certainly cooperate with the Landlord in hiring reputable people; however, we will not relinquish our right to contract for our own services.

Section 8.2, Subsection K, Line 4. The word "antenna" should be deleted and included in this should be your permission for us to install an antenna system such as is necessary for the operation of our store.

Section 8.2, Subsection N. This Subsection should be deleted. We cannot give trading stamps in any case at the present time since we sell Fair Trade; however, we do not intend to give up our right to do so should it become in our opinion a good business practice.

Article IX.

Section 9.1, Subsection B(vi). In the fourth line from the end of this Subsection, 90 days should be deleted and 30 days added.

Section 9.1, Subsection C, Line 4. Add the words "promptly and diligently" after the words "Section 3.1."

Section 9.1, Subsection C, Line 8. The words "unless" through "casualty" should be deleted. Comment: We are not going to have our store moved without our consent.

Section 9.1, Subsection C. Add at the end of this Subsection: "In the event of default by Landlord in performance of such repairs, Tenant may terminate this Lease with no further liability upon 30 days notice to the Landlord."

Section 9.1, Subsection D, Line 2. After the word "Rent" should be added: "and all additional rents payable."

Section 9.1, Subsection D, Line 3. The word "substantial" should be deleted.

Section 9.1, Subsection D. The following should be added at the end of this Subsection: "provided the amount of floor space remaining cannot reasonably be used for the profitable conduct of Tenant's business, Tenant may upon 10 days notice to Landlord terminate the Lease and all of Tenant's obligations under said Lease shall cease."

Section 9.1, Subsection E, Line 29. From the words "In the event" to the end of the Subsection should be deleted.

(Article IX cont.)

Section 9.2, Subsection B. At the end of this Subsection should be added: "provided Tenant is able to reasonably conduct his business profitably in the remaining portion. If not, Tenant shall have the right to terminate this Lease upon notice in writing within 30 days."

Section 9.2, Subsection E, Line 3. After the word "conveyed" should be added: "either Landlord or Tenant may terminate this Lease by giving 30 days notice."

Section 9.2, Subsection E. At the end of this Subsection should be added: "Tenant shall have the same right of termination as given to Landlord if as the result of this taking his business is materially affected."

Section 9.2, Subsection F, Line 3. After the word "Term" add: "for a period not exceeding 30 days."

Section 9.2, Subsection F, Line 6. After the word "full" should be added: "If temporary use or occupancy continues after 30 days, Minimum Rent and Additional Rent payable shall abate until such condemnation or taking ceases."

Section 9.2, Subsection G, Line 9. Beginning with "but only" to the end of the Subsection should be deleted.

Article X.

Section 10.1, Subsection B, Line 11. 4% per annum should be changed to 7% per annum.

Section 10.1, Subsection B, Line 12. The sentence beginning with "If the Demised Premises" and ending with "reletting" (Line 17) should be deleted.

(Article X cont.)

Section 10.2, Subsection A(i), Line 3. We need 15 days rather than 3 days notice.

Section 10.2, Subsection A(iii). This should be deleted in its entirety.

Section 10.2, Subsection A, Lines 2, 5 and 17. Three days should be changed to 30 days.

Section 10.2, Subsection B, Line 2. Beginning with the word "or" through the word "events" (Line 5) should be deleted.

Section 10.2, Subsection A, Line 6. The words "either by force or otherwise" should be deleted.

Section 10.3, Subsection A(iii), Line 4. Beginning with the word "conclusively" through the word "and" at the beginning of Line 6 should be deleted.

Section 10.3, Subsection A(iii), Line 11. The word "reasonable" should be inserted between the words "Landlord's" and "expenses."

Section 10.3, Subsection A(iii), Line 13. The word "reasonable" should be inserted between the words "all" and "repossession."

Section 10.3, Subsection A(iii), Line 14. Delete the words beginning with "alteration" and ending with "reletting." Comment: We pay for the fixturing once and that is enough.

Section 10.3, Subsection A(vi)(b). This should be deleted in its entirety.

Section 10.3, Subsection A(vii). Beginning with the word "either" on Line 2 through the word "therefor)" on Line 4 should be deleted.

(Article X cont.)

Section 10.3, Subsection A(viii), Line 5. The words beginning with "which" and ending with "periods" should be deleted.

Section 10.3, Subsection A(viii), Line 6. The word "sole" should be deleted and the word "reasonable" substituted.

Section 10.3, Subsection A(viii), Line 1, Page 35. Beginning with the word "Landlord" to the end of this Subsection should be deleted.

Section 10.3, Subsection B, Line 1 and Line 4. The words "or threatened breach" should be deleted.

Section 10.3, Subsection C. This Subsection should be deleted in its entirety.

Section 10.4, Line 7. The sentence beginning with the word "Tenant" to the end of the Subsection should be deleted.

Section 10.5, Line 5. The word "twice" should be deleted.

Section 10.6, Line 2. Ten (10) days' notice should be changed to thirty (30) days' notice.

Article XI.

Section 11.1, Subsection A(i), Line 1. Between the words "by" and "mail" the following should be added: "registered or certified." Following the word "mail" the words "with return receipt requested" should be added.

(Article XI cont.)

Section 11.1, Subsection A(i). At the end of this paragraph, the words "with a copy to such other persons as Tenant may designate" should be added.

Section 11.3. This should be deleted in its entirety. This should not be necessary as we are listed on the New York Stock Exchange.

Section 11.5, Line 2. 10 business days should be changed to 30 business days. The same would apply on Line 4, Page 38 of this Section.

Section 11.10. The following should be deleted: From the word "financing" on Line 2 to "Expiration Date" on Line 10 (Page 39).

Section 11.11, Subsection N. At the end of this Subsection add: "and Landlord's agents, servants, employees or contractors."

Section 11.12. Delete from the word "Landlord" on Line 11 to the end of this Subsection.

Guaranty

Paragraph 2, Line 4. Beginning with the word "and" through the words "all of" on Line 7 should be deleted.

Paragraph 3, Line 10. Delete the words beginning with "whether" through "Guarantor" (Line 11), and add the following: "provided that notice of such action is given to Guarantor."

IV. Special Conditions for Performance of Tenant's Work.

Section E, Page 62. This should be deleted as the Landlord has the right to approve these people and that should be sufficient.

Rider to Section 2.2

Line 12. This should provide for 90 days notice.

Rider to Section 3.3:

Line 16. This should provide for 30 days notice.

Line 17. The word "reasonable" should be inserted between the words "Landlord's" and "cost."

E294

Trial Exhibit O, Request For
Check Dated September 19, 1973

REQUEST FOR CHECK

(MUST BE COMPLETED IN INK OR TYPEWRITTEN)

M1055-1
REV.8-72

DATE: September 19, 1973

ISSUE CHECK TO:
NAME: Feist & Feist
STREET ADDRESS: 52 Park Place
CITY AND STATE: Newark, New Jersey
ZIP CODE: 07102

ACCOUNT NO. 140746 D-37-01-01 $ 1,053.53
$
$
AMOUNT OF CHECK $ 1,053.53

EXPLANATION:
Store 201
Common Area 8/8-3/31 $137.97
Common Area 9/1-9/30 $179.95
Tax Rent 9/1-9/30 $735.61

MAIL TO:
Above

HOLD CHECK FOR:
EXT. NO.

REQUESTED BY: H. E. Grenosko

APPROVED BY:

PLANT CODE (CHECK ONE)

- R ☐ FT. WAYNE CONSUMER PRODUCTS
- W ☐ FT. WAYNE G & I
- Z ☒ FT. WAYNE CORPORATE
- A ☐ ANDREWS
- C ☐ JOHNSON CITY
- K ☐ BAKER FURN.
- V ☐ MORRISTOWN IND. PARK
- J ☐ JEFF. CITY
- L ☐ LENOIR
- S ☐ LASALLE DEITCH
- G ☐ GREENEVILLE
- T ☐ TORRANCE
- M ☐ MX SYSTEMS
- H ☐ ARDEN
- P ☐ GAC
- N ☐ MX INT'L INC.
- I ☐ SELMER
- X ☐ ~~Magna~~ leasing

BELOW FOR ACCOUNTING USE ONLY

DUE DATE
REFERENCE NO.
ACCOUNTING APPROVAL
VENDOR NO.

~~PLT.~~
DEPT EX 21 FOR ID:
R. JACOBS 10/9 19 75

Feist & Feist

REAL ESTATE and INSURANCE

58 Park Place, Newark, N.J. 07102

MANAGING AGENTS

AREA CODE 201 643-8500

RECEIVED AUG 13 1973 G. E. PHILLIPS

PLEASE REMIT TO ** STATEN ISLAND MALL

MANAGER
STATEN ISLAND MALL
STATEN ISLAND
NEW YORK

MO. DAY YR.

PROP. NO. 10640
TENANT NO. 5936201

O. DAY YR.	* I N V O I C E *		CURRENT CHARGES	UNPAID BALANCE	AMOUNT DUE
	BALANCE FORWARD	6/00/00		.00	
	MIN. RENT	6/9-6/31	1,454.05	1449.99	
	TAX RENT	6/9-6/31	303.99		
	COMM AREA	6/9-6/31	437.17 OK		
	UTILITY GAS	6/9-6/31	147.14		
	SUB TOTALS		2,943.75	.00	
				PAY THIS AMOUNT ▶	2,943.75

* PAY ITEM

E295

Trial Exhibit O

AREA CODE 201 643-8500

Feist & Feist

REAL ESTATE and INSURANCE

58 Park Place, Newark, N.J. 07102

MANAGING AGENTS

PLEASE REMIT TO ** STATEN ISLAND MALL

MASSAPQUA
STATEN ISLAND MALL 2010
STATEN ISLAND
NEW YORK

09 01 73
MO. DAY YR.

PROP.NO. 70640
TENANT NO. 5436201

MO. DAY YR.	* INVOICE *		CURRENT CHARGES	UNPAID BALANCE	AMOUNT DUE
	BALANCE FORWARD	8/31/73		2,943.75	
	MIN. RENT	SEPT 1973	1,949.46	— pd 1956.83	
	TAX RENT	SEPT 1973	* 735.01		
	COMM AREA	SEPT 1973	* 179.93	— OK	
	UTILY CHG	SEPT 1973	974.49	— Vent pay - not agreed to yet	
	SUB TOTALS		3,839.91	2,943.75	

9-14 CKD w Jane Kelly — OK to pay

PAY THIS AMOUNT ▶ 0,763.20

* PAY ITEMS

Trial Exhibit O

E296

E297

Trial Exhibit O

ROUTING SLIP

DATE 9-14-73

TO: [illegible]

____ Please see me
____ For your information
✓ Your comments, please
____ Return to me
____ Please handle/
Prepare reply
____ For your signature
____ File

Remarks: [illegible]

From [illegible]

E298

Trial Exhibit O

Staten Island Mall

Feist & Feist
Managing Agents
58 Park Place, Newark, N. J. 07102
Telephone: 201-643-8500

September 6, 1973

Mr. John F. Kelly
Corporate Director - Real Estate
The Magnavox Company
Fort Wayne, Indiana 46804

Re: Staten Island Mall
Magnaleasing Inc. Lease

Dear Mr. Kelly:

In response to your letter of August 23, 1973, in which you have raised certain questions concerning the tax statement for the referenced store, we offer the following comments:

(1) Real estate taxes for Staten Island Mall are billed on a fiscal year ending June 30. Taxes for the year ended June 30, 1974 aggregate $675,671.52 or $56,305.96, stated on a monthly basis. The taxes shown on your tax statement for the period August 9, 1973 to January 31, 1974 are therefore computed as follows:

8/9 - 8/31/73 ($56,305.96 x .7667)	$ 43,169.78
9/1/73 - 1/31/74 (5 mos. @ $56,305.96)	281,529.80
	$324,699.58

(2) Total leaseable floor space is approximately 420,000 square feet therefore the difference between total leaseable floor space and the estimated leased or occupied space of 250,000 square feet used in the tax statement is 170,000 square feet.

Staten Island Mall

Mr. John F. Kelly

(3) With respect to your comments concerning a $1.00 per square foot estimate for real estate taxes, I am sure you must be aware of the difficulties of estimating taxes in New York before actual assessment date. Also you must realize that since the proration of taxes is based on leased space any comparison of an estimate with actual expense is significantly affected by the level of occupancy.

Please let me know if there is any additional information that might be required.

Very truly yours,

Staten Island Mall
FEIST & FEIST Managing Agents

Donald E. Faughnan
Controller

DEF:bc
Enclosure

cc:

E300

Trial Exhibit P, December 3, 1975 Memo From W.R. Cline to Jack Kelly

(INTEROFFICE COMMUNICATION)

Magnavox

TO: JACK KELLY DATE: DEC 3, 1975 FROM: W. R. CLINE

COPIES TO:

SUBJECT: STATEN ISLAND HEC UTILITY INVOICE

ACCORDING TO THE LEASE, WE HAVE NO CHOICE BUT TO PAY THE INCREASED RATE, AS I SEE IT.

DEFT EX 25 FOR ID.
B. JACOBS 10/10 19 75

Bill

To Gen'l Counsel
Office Mgr
12-5-73

Def. Ex. P for ID.
Sec.

12-3-73

E301

Trial Exhibit P

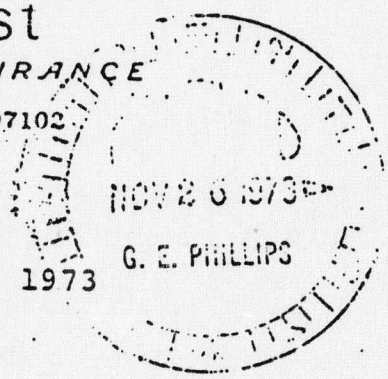
to Bill Cline for comments 11-27-73

Feist & Feist

REAL ESTATE and INSURANCE

58 Park Place, Newark, N.J. 07102

201-643-8500



Magnavox 2010

November 12, 1973

PLEASE REMIT TO ** STATEN ISLAND MALL

Utility Charges as Recomputed:

October 1973		$ 726.74
November 1973		777.56
		1,504.30

Previously Billed:

October 1973	$ 690.05	
November 1973	690.05	1,380.10

Balance Due $ 124.20

Adjustment of Utility Charges pursuant to Section 6.4 of your lease per letter dated November 12, 1973.

SM-6-72

E302

Trial Exhibit P

Staten Island Mall

Please reply to: Feist & Feist, Managing Agents
58 Park Place, Newark, N.J. 07102
Telephone: 201-643-8500

November 12, 1973

Magnaleasing, Inc.
1700 Magnavox Way
Fort Wayne, Indiana

Re: Staten Island Mall
Magnavox Lease

Gentlemen:

Reference is made to the lease ("Lease"), dated May 4, 1973, by and between Staten Island Mall, as Landlord, and Magnaleasing, Inc., as Tenant, covering store number 201 in Staten Island Mall, Staten Island, New York.

We have been notified by Brooklyn Union Gas Company and Consolidated Edison Company of New York, Inc. of a revision in their rates effective August 23, 1973 and October 19, 1973, respectively. Accordingly, pursuant to Section 6.4 of the Lease your Utility Charge has increased from $2.3008 per square foot of Floor Space of the Demised Premises to $2.5926 per square foot of Floor Space of the Demised Premises. Therefore, from October 19, 1973 until such time as there shall be a further adjustment of the Utility Charge pursuant to Section 6.4 of the Lease, the Utility Charge is $9,330.77 per annum payable in twelve equal monthly installments of $777.56, in advance, on the first day of each calendar month.

We have enclosed herewith an invoice representing the adjustment of your previously billed Utility Charges for October and November 1973 and four copies of a letter agreement setting forth the revised Utility Charge. Please execute two of the letter agreements and return them to the undersigned. The other two copies are for your files.

E303

Trial Exhibit P

Staten Island Mall

November 12, 1973
Page Two

All terms used in this letter agreement that are defined in the Lease shall be deemed to be so defined in this letter agreement.

Very truly yours,

STATEN ISLAND MALL
BY: BLACKFRIARS REALTY CORP.
(A JOINT VENTURER)

JOHN A. FEIST
VICE PRESIDENT

JAF/sk
enclosures
Certified Mail
Return Receipt Requested

E304

Trial Exhibit P

Staten Island Mall

Please reply to: Feist & Feist, Managing Agents
58 Park Place, Newark, N.J. 07102
Telephone: 201-643-8500

November 12, 1973

Magnaleasing, Inc.
1700 Magnavox Way
Fort Wayne, Indiana

Re: Staten Island Mall
Magnavox Lease

Gentlemen:

Reference is made to the lease ("Lease"), dated May 4, 1973, by and between Staten Island Mall, as Landlord, and Magnaleasing, Inc., as Tenant, covering store number 201 in Staten Island Mall, Staten Island, New York.

This will serve to set forth our understanding and agreement that as of the date hereof the Utility Charge is $9,330.77 per annum.

Except as hereby amended, the Lease shall remain unmodified and in full force and effect.

All terms used in this letter agreement that are defined in this letter agreement.

If the foregoing accurately sets forth our understanding and agreement, kindly execute two copies of this letter and return them to the undersigned.

Very truly yours,

STATEN ISLAND MALL
BY: BLACKFRIARS REALTY CORP.
(A JOINT VENTURER)

JOHN A. FEIST
VICE PRESIDENT

JAF/sk
enclosures
Certified Mail

ACCEPTED AND AGREED TO:

By:

(1)

Trial Exhibit Q, May 17, 1974
Memo From John F. Kelly
To G.A. Michaelson

(INTEROFFICE COMMUNICATION)

Magnavox

TO: Mr. G. A. Michaelson DATE: May 17, 1974 FROM: John F. Kelly

COPIES TO: Mr. W. R. Cline SUBJECT: Staten Island Mall

DEFT EX 30 FOR ID
R. JACOBS 10/10 19 75

On May 16, 1974 Bill Cline and I met with representatives of Staten Island Mall in New York. Those present were John Feist, President, Lawrence Eisenberg, Vice President and Patrick Dunne, Section Superintendent.

I informed them that we were faced with an extremely serious situation; unless costs in this Mall were reduced substantially and/or we were able to increase sales in our store dramatically, it was unlikely that the store would be able to continue to operate. Frankly, I didn't see how any small tenant could operate with the costs they were being assessed in this Mall.

Mr. Feist said he recognized the problem and was making an effort to adjust the common area cost figures downward. I was further informed that they were attempting to reduce taxes. I was told that they should have some more definite answers on costs within the next couple of weeks. It appears that they are attempting to bring costs in line; however, they have been beset with some horrendous union problems and resulting cost increases.

They stated they would be perfectly willing for us to examine their books and would be happy to have any suggestions from us as to how they could reduce costs. I do believe they are making a concerted effort to improve the situation; however, based on their past performance and the problems of doing business in New York, I really don't hold out much hope. They were unable to offer any reasonable explanation as to why their original estimates of the tax and common area maintenance costs were so very far out of line.

They stated that they were working with two department stores in an attempt to increase the draw to the center, and are constructing a convenience center adjacent to the Mall. They said that they were fairly close to reaching an agreement with several space users to fill up some of the Mall vacancies.

J. MICHAEL
MAY 21 1974
MAGNAVOX CONSUMER PRODUCTS CO.

Def. Ex. Q Sgd.
rec

E306

Trial Exhibit Q

Mr. G. A. Michaelson

May 17, 1974

To provide evidence of the gravity of our situation, I offered to furnish Mr. Feist with a P&L statement for the store for the first quarter of 1974 and an estimated P&L for the year 1974. He stated that upon receipt of these items he would see if there was anything he could do to alleviate the situation. It should be made clear, however, that no promises were made.

John F. Kelly

/mm

E307

Trial Exhibit BB

Defendants' Trial Exhibit BB is Amended Complaint, which appears on page 6a of Joint Appendix, Volume I.

Trial Exhibit CC, August 3, 1973 Memo From John F. Kelly To D.F. Minahan

DEFT EX 17 FOR ID.
R. JACOBS 10/9 19 75

Mr. D. F. Minahan August 3, 1973 John F. Kelly

W. F. Surette
J. M. Whelan
G. A. Michaelson
W. R. Cline
C. L. Weilbaum

Staten Island Mall
Fixturing Costs

This is a summary of the meeting held on Monday, July 30, 1973, in the New York Office of The Magnavox Company. Those present were D. F. Minahan, W. F. Surette, J. M. Whelan, G. A. Michaelson, and J. F. Kelly.

The purpose of the meeting was to discuss the Mall program in general with Mr. Surette and Mr. Whelan, and to discuss the overrun in the Staten Island Mall costs from the $73,546.81 as requested in RFE #HEC-73-1.1, dated June 18, 1973, and the actual costs determined as the result of competitive bidding for the job at $107,000.

It was determined that this increased cost was due primarily to under-estimation of general construction costs in New York City, and more particularly to the unusually high electrical costs. It was decided that Mr. Cline and I were to consult with the low bidders and attempt to effect a savings in the general construction costs; then submit a new RFE reflecting these costs with 15% added to the estimated costs for contingencies.

It was further decided that in all future RFEs for store fixturing, a 15% contingency fee would be added and dispense with the necessity of preparing another RFE where there has been a minor cost overrun.

It was further proposed that pursuant to a conversation Mr. Michaelson and I had with Morris Gliklich, the modification of the Sublease would be approved whereby the 5% surcharge of base rent normally found on Showroom Leases would be eliminated, and Mr. Gliklich would pay

Defs Ex CC ~~for id~~

E309

Trial Exhibit CC

Mr. D. F. Minehan August 3, 1973

us 1.1% of his gross retail sales against a minimum monthly payment of $500 for the 15-year term of the Lease in order to amortize the fixtures. Further, at Mr. Whelan's suggestion, we were to include a provision that Magnavox personnel be allowed to audit Mr. Gliklich's books at reasonable times to insure that the fixture payments are accurate.

Please advise me if there are any additions or corrections.

John F. Kelly

/mm

Trial Exhibit DD, Consolidated Edison Company Rate Structures

Consolidated Edison Company
of New York, Inc.

P. S. C. No. 8—Electricity
Fifth Revised Leaf No. 42
Superseding Third Revised Leaf No. 42

SERVICE CLASSIFICATION No. 4

COMMERCIAL AND INDUSTRIAL—REDISTRIBUTION

Applicable to Use of Service for

Light, heat and power for multiple-tenanted commercial or industrial buildings where the Customer's requirements are in excess of 10 Kilowatts, subject to the Special Provisions of this Service Classification.

Character of Service

Of the various characteristics of service listed and more fully described in General Rule III-2, the following may be designated for service by the Company under this Service Classification, subject to the limitations set forth in such Rule. Frequencies and voltages shown are approximate. All are continuous.

Standard Service

Any derivative of the standard alternating current, 3 phase, 4 wire system at 60 cycles and 120/208 volts.

Non-Standard Service

Direct Current at 120, 120/240 or 240 volts
Low Tension Alternating Current—60 cycles:
- Single phase at 120/240 volts
- Three phase at 265/460 volts
- Three phase at 240 volts
- Two phase at 120/240 or 230 or 240 volts

High Tension Alternating Current—60 cycles:
- Three phase at 2,400/4,150 volts
- Three phase at 13,200 volts
- Single phase and three phase at 2,400 volts

High Tension Alternating Current—25 cycles:
- Three phase at 6,600 volts
- Three phase at 11,000 volts

Rate

Demand Charge (per month)		Low Tension Service	High Tension Service
For the first	100 kw of maximum demand	$5.41 per kw	$5.41 per kw
For the next	200 kw of maximum demand	$4.66 per kw	$4.36 per kw
For the next	9,700 kw of maximum demand	$4.21 per kw	$3.91 per kw
For the next	15,000 kw of maximum demand	$3.91 per kw	$3.61 per kw
For excess over	25,000 kw of maximum demand	$3.26 per kw	$2.91 per kw

Energy Charge (per month)—for both low and high tension service

For the first	9,000 kwhr	2.73 cents per kwhr
For the next	21,000 kwhr	2.23 cents per kwhr
For the next	120,000 kwhr	1.98 cents per kwhr
For the next	300,000 kwhr	1.73 cents per kwhr
For the next	1,050,000 kwhr	1.48 cents per kwhr
For excess over	1,500,000 kwhr	1.23 cents per kwhr

Provided,

(a) When 360 hours' use of the maximum demand for the month is less than 3,600,000 kwhr, the first 3,600,000 kwhr shall be billed at the above rates and the excess over 3,600,000 kwhr shall be billed at 0.88 cent per kwhr.

(b) When 360 hours' use of the maximum demand for the month is more than 3,600,000 kwhr, all excess kwhr over 360 hours' use of the maximum demand shall be billed at 0.68 cent per kwhr.

(Service Classification No. 4—Continued on Leaf No. 43)

DD

Trial Exhibit DD

Consolidated Edison Company
of New York, Inc.

P. S. C. No. 8—Electricity
Sixth Revised Leaf No. 42
Superseding Fifth Revised Leaf No. 42
(Fourth Revised Leaf No. 42 Canceled)

SERVICE CLASSIFICATION No. 4

COMMERCIAL AND INDUSTRIAL—REDISTRIBUTION

Applicable to Use of Service for

Light, heat and power for multiple-tenanted commercial or industrial buildings where the Customer's requirements are in excess of 10 kilowatts, subject to the Special Provisions of this Service Classification.

Character of Service

Of the various characteristics of service listed and more fully described in General Rule III-2, the following may be designated for service by the Company under this Service Classification, subject to the limitations set forth in such Rule. Frequencies and voltages shown are approximate. All are continuous.

Standard Service

Any derivative of the standard alternating current, 3 phase, 4 wire system at 60 cycles and 120/208 volts.

Non-Standard Service

Direct Current at 120, 120/240 or 240 volts
Low Tension Alternating Current—60 cycles:
- Single phase at 120/240 volts
- Three phase at 265/460 volts
- Three phase at 240 volts
- Two phase at 120/240 or 230 or 240 volts

High Tension Alternating Current—60 cycles:
- Three phase at 2,400/4,150 volts
- Three phase at 13,200 volts
- Single phase and three phase at 2,400 volts

High Tension Alternating Current—25 cycles:
- Three phase at 6,600 volts
- Three phase at 11,000 volts

Rate

Demand Charge (per month)	Low Tension Service	High Tension Service
For the first 100 kw of maximum demand	$6.36 per kw	$6.36 per kw
For the next 200 kw of maximum demand	$5.43 per kw	$5.04 per kw
For the next 9,700 kw of maximum demand	$4.86 per kw	$4.47 per kw
For the next 15,000 kw of maximum demand	$4.47 per kw	$4.08 per kw
For excess over 25,000 kw of maximum demand	$3.66 per kw	$3.21 per kw

Energy Charge (per month)—for both low and high tension service

For the first 9,000 kwhr	3.27 cents per kwhr
For the next 21,000 kwhr	2.64 cents per kwhr
For the next 120,000 kwhr	2.32 cents per kwhr
For the next 300,000 kwhr	2.01 cents per kwhr
For the next 1,050,000 kwhr	1.70 cents per kwhr
For excess over 1,500,000 kwhr	1.38 cents per kwhr

Provided,

(a) When 360 hours' use of the maximum demand for the month is less than 3,600,000 kwhr, the first 3,600,000 kwhr shall be billed at the above rates and the excess over 3,600,000 kwhr shall be billed at 0.81 cent per kwhr.

(b) When 360 hours' use of the maximum demand for the month is more than 3,600,000 kwhr, all excess kwhr over 360 hours' use of the maximum demand shall be billed at 0.81 cent per kwhr.

(Service Classification No. 4—Continued on Leaf No. 43)

RECEIVED
OCT 1 1973
E. FRAHER

E312

Trial Exhibit DD

Mr. Pat Dunne

y

P. S. C. No. 8—Electricity
Eighth Revised Leaf No. 42
Superseding Sixth Revised Leaf No. 42

The latest Fuel Adj. Factor. 2.2539

Don Kugel

SERVICE CLASSIFICATION No. 4

:CIAL AND INDUSTRIAL—REDISTRIBUTION

rvice for

power for multiple-tenanted commercial or industrial buildings where the ıirements are in excess of 10 kilowatts, subject to the Special Provisions Classification.

characteristics of service listed and more fully described in General Rule wing may be designated for service by the Company under this Service ıbject to the limitations set forth in such Rule. Frequencies and voltages oximate. All are continuous.

ervice

rivative of the standard alternating current, 3 phase, 4 wire system at 5-16 es and 120/208 volts.

Non-Standard Service

Direct Current at 120, 120/240 or 240 volts
Low Tension Alternating Current—60 cycles:
Single phase at 120/240 volts
Three phase at 265/460 volts
Three phase at 240 volts
Two phase at 120/240 or 230 or 240 volts
High Tension Alternating Current—60 cycles:
Three phase at 2,400/4,150 volts
Three phase at 13,200 volts
Single phase and three phase at 2,400 volts
High Tension Alternating Current—25 cycles:
Three phase at 6,600 volts
Three phase at 11,000 volts

Rate

Demand Charge (per month)	Low Tension Service	High Tension Service
For the first 100 kw of maximum demand	$6.99 per kw	$6.99 per kw
For the next 200 kw of maximum demand	$5.97 per kw	$5.52 per kw
For the next 9,700 kw of maximum demand	$5.34 per kw	$4.92 per kw
For the next 15,000 kw of maximum demand	$4.92 per kw	$4.47 per kw
For excess over 25,000 kw of maximum demand	$4.02 per kw	$3.54 per kw

Commencing with the summer period of 1974, there will be an additional charge of 60 cents per kilowatt of demand. The summer period will be defined as the first scheduled monthly billing period ending after May 15 and for four successive monthly billing periods thereafter.

Energy Charge (per month)—for both low and high tension service

For the first 9,000 kwhr	3.77 cents per kwhr
For the next 21,000 kwhr	3.05 cents per kwhr
For the next 120,000 kwhr	2.68 cents per kwhr
For the next 300,000 kwhr	2.32 cents per kwhr
For the next 1,050,000 kwhr	1.96 cents per kwhr
For excess over 1,500,000 kwhr	1.59 cents per kwhr

Provided,

(a) When 360 hours' use of the maximum demand for the month is less than 3,600,000 kwhr, the first 3,600,000 kwhr shall be billed at the above rates and the excess over 3,600,000 kwhr shall be billed at 0.93 cent per kwhr.

(b) When 360 hours' use of the maximum demand for the month is more than 3,600,000 kwhr, all excess kwhr over 360 hours' use of the maximum demand shall be billed at 0.093 cent per kwhr.

(Service Classification No. 4—Continued on Leaf No. 43)

Date of Issue: March 6, 1974

Effective March 6, 1974, under Authority of Public Service Commission, State of New York, Special Permission Order No. EL-1528, dated March 7, 1974.

Date Effective: April 6, 1974

Effective March 8, 1974 Under Section 113 of the Public Service Law in Case 26538

Issued by JOHN V. THORNTON, *Vice President*
4 Irving Place, New York, N. Y. 10003

Edison 60 Bay Street, Staten Island, N. Y. 10301
Telephone (212) 390-7203

E313

Trial Exhibit DD

P. S. C. No. 8—Electricity
Tenth Revised Leaf No. 42
Superseding Ninth Revised Leaf No. 42
(Seventh Revised Leaf No. 42 Canceled)

Donald S. Kugit
Commercial Service Representative
Staten Island Division

:E CLASSIFICATION No. 4

ND INDUSTRIAL—REDISTRIBUTION

Applicable to Use of Service for

Light, heat and power for multiple-tenanted commercial or industrial buildings where the Customer's requirements are in excess of 10 kilowatts, subject to the Special Provisions of this Service Classification.

Character of Service

Of the various characteristics of service listed and more fully described in General Rule III-2, the following may be designated for service by the Company under this Service Classification, subject to the limitations set forth in such Rule. Frequencies and voltages shown are approximate. All are continuous.

Standard Service

Any derivative of the standard alternating current, 3 phase, 4 wire system at 60 cycles and 120/208 volts.

Non-Standard Service

Direct Current at 120, 120/240 or 240 volts

Low Tension Alternating Current—60 cycles:
- Single phase at 120/240 volts
- Three phase at 265/460 volts
- Three phase at 240 volts
- Two phase at 120/240 or 230 or 240 volts

High Tension Alternating Current—60 cycles:
- Three phase at 2,400/4,150 volts
- Three phase at 13,200 volts
- Single phase and three phase at 2,400 volts

High Tension Alternating Current—25 cycles:
- Three phase at 6,600 volts
- Three phase at 11,000 volts

Rate

Demand Charge (per month)		Low Tension Service	High Tension Service
For the first	100 kw of maximum demand	$8.10 per kw	$8.10 per kw
For the next	200 kw of maximum demand	$7.17 per kw	$6.78 per kw
For the next	9,700 kw of maximum demand	$6.60 per kw	$6.21 per kw
For the next	15,000 kw of maximum demand	$6.21 per kw	$5.82 per kw
For excess over	25,000 kw of maximum demand	$5.40 per kw	$4.95 per kw

Commencing with the summer period of 1974, there will be an additional charge of 60 cents per kilowatt of demand. The summer period will be defined as the first scheduled monthly billing period ending after May 15 and for four successive monthly billing periods thereafter.

Energy Charge (per month)—for both low and high tension service

For the first	9,000 kwhr	3.54 cents per kwhr
For the next	21,000 kwhr	2.91 cents per kwhr
For the next	120,000 kwhr	2.59 cents per kwhr
For the next	300,000 kwhr	2.28 cents per kwhr
For the next	1,050,000 kwhr	1.97 cents per kwhr
For excess over	1,500,000 kwhr	1.65 cents per kwhr

Provided,

(a) When 360 hours' use of the maximum demand for the month is less than 3,600,000 kwhr, the first 3,600,000 kwhr shall be billed at the above rates and the excess over 3,600,000 kwhr shall be billed at 1.08 cent per kwhr.

(b) When 360 hours' use of the maximum demand for the month is more than 3,600,000 kwhr, all excess kwhr over 360 hours' use of the maximum demand shall be billed at 1.08 cent per kwhr.

(Service Classification No. 4—Continued on Leaf No. 43)

Date of Issue: November 19, 1974

Effective November 27, 1974 under authority of Public Service Commission, State of New York, Order dated November 26, 1974 in Case 26538.

Date Effective: December 20, 1974

Issued by JOHN V. THORNTON, *Vice President*
4 Irving Place New York N. Y. 10003

Consolidated Edison Company of New York, Inc.

P. S. C. No. 8—Electricity
Twelfth Revised Leaf No. 42
Superseding Eleventh Revised Leaf No. 42

SERVICE CLASSIFICATION No. 4

COMMERCIAL AND INDUSTRIAL—REDISTRIBUTION

Applicable to Use of Service for

Light, heat and power for multiple-tenanted commercial or industrial buildings where the Customer's requirements are in excess of 10 kilowatts, subject to the Special Provisions of this Service Classification.

Character of Service

Of the various characteristics of service listed and more fully described in General Rule III-2, the following may be designated for service by the Company under this Service Classification, subject to the limitations set forth in such Rule. Frequencies and voltages shown are approximate. All are continuous.

Standard Service

Any derivative of the standard alternating current, 3 phase, 4 wire system at 60 cycles and 120/208 volts.

Non-Standard Service

Direct Current at 120, 120/240 or 240 volts

Low Tension Alternating Current—60 cycles:
- Single phase at 120/240 volts
- Three phase at 265/460 volts
- Three phase at 240 volts
- Two phase at 120/240 or 230 or 240 volts

High Tension Alternating Current—60 cycles:
- Three phase at 2,400/4,150 volts
- Three phase at 13,200 volts
- Single phase and three phase at 2,400 volts

High Tension Alternating Current—25 cycles:
- Three phase at 6,600 volts
- Three phase at 11,000 volts

Rate

Demand Charge (per month)		Low Tension Service	High Tension Service
For the first	100 kw of maximum demand	$8.10 per kw	$8.10 per kw
For the next	200 kw of maximum demand	$7.17 per kw	$6.78 per kw
For the next	9,700 kw of maximum demand	$6.60 per kw	$6.21 per kw
For the next	15,000 kw of maximum demand	$6.21 per kw	$5.82 per kw
For excess over	25,000 kw of maximum demand	$5.40 per kw	$4.95 per kw

Commencing with the summer period of 1974, there will be an additional charge of 60 cents per kilowatt of demand. The summer period will be defined as the first scheduled monthly billing period ending after May 15 and for four successive monthly billing periods thereafter.

Energy Charge (per month)—for both low and high tension service

For the first	9,000 kwhr	3.54 cents per kwhr
For the next	21,000 kwhr	2.91 cents per kwhr
For the next	120,000 kwhr	2.59 cents per kwhr
For the next	300,000 kwhr	2.28 cents per kwhr
For the next	1,050,000 kwhr	1.97 cents per kwhr
For excess over	1,500,000 kwhr	1.65 cents per kwhr

Provided,

(a) When 360 hours' use of the maximum demand for the month is less than 3,600,000 kwhr, the first 3,600,000 kwhr shall be billed at the above rates and the excess over 3,600,000 kwhr shall be billed at 1.08 cent per kwhr.

(b) When 360 hours' use of the maximum demand for the month is more than 3,600,000 kwhr, all excess kwhr over 360 hours' use of the maximum demand shall be billed at 1.08 cent per kwhr.

For all customers under this service classification there will be an additional charge on the effective date hereof and for not more than one year thereafter of 0.0023 cent per kwhr.

(Service Classification No. 4—Continued on Leaf No. 43)

SERVICE CLASSIFICATION No. 4

COMMERCIAL AND INDUSTRIAL—REDISTRIBUTION

Applicable to Use of Service for

Light, heat and power for multiple-tenanted commercial or industrial buildings where the Customer's requirements are in excess of 10 kilowatts, subject to the Special Provisions of this Service Classification.

Character of Service

Of the various characteristics of service listed and more fully described in General Rule III-2, the following may be designated for service by the Company under this Service Classification, subject to the limitations set forth in such Rule. Frequencies and voltages shown are approximate. All are continuous.

Standard Service

Any derivative of the standard alternating current, 3 phase, 4 wire system at 60 cycles and 120/208 volts.

Non-Standard Service

Direct Current at 120, 120/240 or 240 volts

Low Tension Alternating Current—60 cycles:
- Single phase at 120/240 volts
- Three phase at 265/460 volts
- Three phase at 240 volts
- Two phase at 120/240 or 230 or 240 volts

High Tension Alternating Current—60 cycles:
- Three phase at 2,400/4,150 volts
- Three phase at 13,200 volts
- Single phase and three phase at 2,400 volts

High Tension Alternating Current—25 cycles:
- Three phase at 6,600 volts
- Three phase at 11,000 volts

Rate

Demand Charge (per month)	Low Tension Service	High Tension Service
For the first 100 kw of maximum demand	$ 8.61 per kw	$ 8.61 per kw
For the next 200 kw of maximum demand	$ 7.68 per kw	$ 7.29 per kw
For the next 9,700 kw of maximum demand	$ 7.11 per kw	$ 6.72 per kw
For the next 15,000 kw of maximum demand	$ ~~6.72 per kw~~	$ 6.33 per kw
For excess over 25,000 kw of maximum demand	$ 5.91 per kw	$ 5.46 per kw

There will be an additional charge of 60 cents per kilowatt of demand during the summer period. The summer period will be defined as the first scheduled monthly billing period ending after May 15 and for four successive monthly billing periods thereafter.

Energy Charge (per month)—for both low and high tension service

For the first 40,000 kwhr	2.88 cents per kwhr
For the next 1,460,000 kwhr	2.18 cents per kwhr
For excess over 1,500,000 kwhr	~~2.04 cents per kwhr~~

Provided,

(a) When 360 hours' use of the maximum demand for the month is less than 3,600,000 kwhr, the first 3,600,000 kwhr shall be billed at the above rates and the excess over 3,600,000 kwhr shall be billed at 1.47 cents per kwhr.

(b) When 360 hours' use of the maximum demand for the month is more than 3,600,000 kwhr, all excess kwhr over 360 hours' use of the maximum demand shall be billed at 1.47 cents per kwhr.

For all customers under this service classification there will be an additional charge effective March 20, 1975 and for not more than one year thereafter of 0.0023 cent per kwhr.

(Service Classification No. 4—Continued on Leaf No. 43)

BEST COPY AVAILABLE

Consolidated Edison Company of New York, Inc.

P. S. C. No. 3—Electricity
Sixteenth Revised Leaf No. 42
Superseding Fifteenth Revised Leaf No. 42

SERVICE CLASSIFICATION No. 4

COMMERCIAL AND INDUSTRIAL—REDISTRIBUTION

Applicable to Use of Service for

Light, heat and power for multiple-tenanted commercial or industrial buildings where the Customer's requirements are in excess of 10 kilowatts, subject to the Special Provisions of this Service Classification.

Character of Service

Of the various characteristics of service listed and more fully described in General Rule III-2, the following may be designated for service by the Company under this Service Classification, subject to the limitations set forth in such Rule. Frequencies and voltages shown are approximate. All are continuous.

Standard Service

Any derivative of the standard alternating current, 3 phase, 4 wire system at 60 cycles and 120/208 volts.

Non-Standard Service

Direct Current at 120, 120/240 or 240 volts

Low Tension Alternating Current—60 cycles:
- Single phase at 120/240 volts
- Three phase at 265/460 volts
- Three phase at 240 volts
- Two phase at 120/240 or 230 or 240 volts

High Tension Alternating Current—60 cycles:
- Three phase at 2,400/4,150 volts
- Three phase at 13,200 volts
- Single phase and three phase at 2,400 volts

High Tension Alternating Current—25 cycles:
- Three phase at 6,600 volts
- Three phase at 11,000 volts

Rate

Demand Charge (per month)	Low Tension Service	High Tension Service
For the first 100 kw of maximum demand	$ 8.80 per kw	$ 8.80 per kw
For the next 200 kw of maximum demand	$ 7.87 per kw	$ 7.43 per kw
For the next 9,700 kw of maximum demand	$ 7.31 per kw	$ 6.92 per kw
For the next 15,000 kw of maximum demand	$ 6.92 per kw	$ 6.53 per kw
For excess over 25,000 kw of maximum demand	$ 6.11 per kw	$ 5.66 per kw

There will be an additional charge of 60 cents per kilowatt of demand during the summer period. The summer period will be defined as the first scheduled monthly billing period ending after May 15 and for four successive monthly billing periods thereafter.

Energy Charge (per month)—for both low and high tension service

For the first 40,000 kwhr	2.90 cents per kwhr
For the next 1,460,000 kwhr	2.21 cents per kwhr
For excess over 1,500,000 kwhr	2.05 cents per kwhr

Provided,

(a) When 360 hours' use of the maximum demand for the month is less than 3,600,000 kwhr, the first 3,600,000 kwhr shall be billed at the above rates and the excess over 3,600,000 kwhr shall be billed at 1.49 cents per kwhr.

(b) When 360 hours' use of the maximum demand for the month is more than 3,600,000 kwhr, all excess kwhr over 360 hours' use of the maximum demand shall be billed at 1.49 cents per kwhr.

For all customers under this service classification there will be an additional charge effective March 20, 1975 and for not more than one year thereafter of 0.0023 cent per kwhr.

(Service Classification No. 4—Continued on Leaf No. 43)

Date of Issue: July 22, 1975

Effective July 25, 1975, under authority of Public Service Commission, State of New York, Special Permission Order No. EL-1590, dated July 24, 1975.

Date Effective: August 23, 1975

Issued by JOHN V. THORNTON, *Vice President*

Trial Exhibit EE, Brooklyn Union Gas Company Rate Structures 12/4/72

LATEST BROOKLYN UNION GAS RATES
AS OF MAY 3 1972

RATE #4 HEATING + A/C

MAY THRU OCT	1ST 300 cu ft	*1.58
	over 300 cu ft	8.8¢ /100 cu ft
NOV THRU APRIL	1ST 300 cu ft	*1.58
	over 300 cu ft	13.7¢ /100 cu ft

RATE #2 GENERAL SERVICE

1ST 600 cu ft -	*3.16
NEXT 4800 "	26.7¢ /100 cu ft
" 4600 "	20.9¢ / "
" 14000 "	19.2¢ / "
" 26000 "	18.2¢ / "
" 50000 "	16.5¢ / "
" 100000 "	14.9¢ / "
over 200000 cu ft	12.1¢ / "

EE

THE BROOKLYN UNION GAS COMPANY

P. S. C. No. 11—GAS
Ninth Revised Leaf No. 24
Superseding Eighth Revised Leaf No. 24

SERVICE CLASSIFICATION No. 4

YEAR-ROUND AIR CONDITIONING SERVICE
(NON-RESIDENTIAL)

Applicable to Use of Service for:

Available to any non-residential consumer upon written application for gas for the heating and cooling in common of the consumer's premises or such portion thereof as uses gas for heating and cooling in common, provided that such applicant shall guarantee to the Company, a minimum revenue of not less than $2[illegible] plus the revenue from the applicable gas adjustment and franchise tax surcharge, during the cooling season which is defined as being the period between May 1st and October 31st, both inclusive. A separate meter will be installed for gas supplied under this Classification and the use of gas measured by this meter for other than year-round air conditioning is expressly prohibited.

Character of Service:

Natural gas (or in the [illegible] of emergency or for economy of operation, manufactured gas or a mixture of [illegible] gas and manufactured gas) of not less than 1,000 B.T.U. per cubic foot, at pressure [illegible] 5-1/2 to 6 inches water column (approximately). Continuous.

Rate:

During the months of May to October, both inclusive
First 300 cu. ft. or less per month $2.17
All over 300 cu. ft. per month .....$ .118 per C cu. ft.

During the months of November to April, both inclusive
First 300 cu. ft. or less per month $2.17
All over 300 cu. ft. per month .....$ .169 per C cu. ft.

Gas Adjustment Clause:

The charges set forth herein shall be subject to a gas adjustment per 100 cubic feet of gas supplied hereunder when changes from the base cost of 6.77 cents per 100 cubic feet of gas occur (as explained on General Information Leaf No. 11).

Franchise Tax Surcharge:

The rates and charges for gas supplied under all service classifications in the area known as the Fifth Ward of the Borough of Richmond shall be subject to a surcharge of 3.30%, reflecting payment required by the City of New York for grant of franchise.

Continued on next Leaf

Date of Issue: August 14, 1973

Issued by Charles L. Neumeyer, Senior Vice President
195 Montague Street
Borough of Brooklyn, City of New York.

Date Effective: Effective August 23, 1973 under authority of Commission Order dated August 21, 1973 in P.S.C. Case No. 26461.

SERVICE CLASSIFICATION No. 4 — Continued

Minimum Charge:

During the cooling season, which is defined as being the period between May 1st and October 31st, both inclusive, $200.00, plus the applicable gas adjustment and franchise tax surcharge.

Terms of Payment:

Net cash.

Term:

Service under this Classification shall be for a period of at least one year from the date of application, and for yearly periods thereafter. Terminable by the consumer on two days' written notice to the Company, but subject to the consumer's performance of any unfulfilled obligation for the contract year in which such notice of termination is given; terminable by the Company on like notice to the consumer and likewise in the manner provided by law and the rules and regulations set forth in the Company's Rate Schedule, on file with the Public Service Commission.

Special Provisions:

Where water is incidentally heated in the air conditioning equipment, gas used for such purpose is available under this Classification.

Additional Charge:

Customers whose use of gas exceeds the permissible volumes set forth in sub-paragraphs (c) and (d) of paragraph 15 A in leaves 9A and 9B will be subject to an additional charge of nine (9) times the charge indicated in the terminal (lowest) block. The imposition of such additional charge shall not limit any rights of the Company to terminate gas service provided for in this Schedule for Gas Service.

THE BROOKLYN UNION GAS COMPANY

P. S. C. No. 11—GAS
Eleventh Revised Leaf No. [illegible]
Superseding Ninth Revised Leaf No. [illegible]

SERVICE CLASSIFICATION No. 4

YEAR-ROUND AIR CONDITIONING SERVICE
(NON-RESIDENTIAL)

Applicable to Use of Service for:

Available to any non-residential consumer upon written application for gas for the heating and cooling in common of the consumer's premises or such portion thereof as uses gas for heating and cooling in common, provided that such applicant shall guarantee to the Company a minimum revenue of not less than $200.00, plus the revenue from the applicable gas adjustment and franchise tax surcharge, during the cooling season which is defined as being the period between May 1st and October 31st, both inclusive. A separate meter will be installed for gas supplied under this Classification and the use of gas measured by this meter for other than year-round air conditioning is expressly prohibited.

Character of Service:

Natural gas (or in the case of emergency or for economy of operation, manufactured gas or a mixture of natural gas and manufactured gas) of not less than 1,000 B.T.U. per cubic foot, at pressure from 5-1/2 to 6 inches water column (approximately). Continuous.

Rate:

During the months of May to October, both inclusive
First 300 cu. ft. or less per month $2.26
All over 300 cu. ft. per month .....$ .123 per C cu. ft.

During the months of November to April, both inclusive
First 300 cu. ft. or less per month $2.26
All over 300 cu. ft. per month .....$ .176 per C cu. ft.

Gas Adjustment Clause:

The charges set forth herein shall be subject to a gas adjustment per 100 cubic feet of gas supplied hereunder when changes from the base cost of 6.77 cents per 100 cubic feet of gas occur (as explained on General Information Leaf No. 11).

Franchise Tax Surcharge:

The rates and charges for gas supplied under all service classifications in the area known as the [illegible] Ward of the Borough of Richmond shall be subject to a surcharge of 3.30%, reflecting payment required by the City of New York for grant of franchise.

Continued on next Leaf

Date of Issue: February 22, 1974

Issued by Charles L. Hoagland, Senior Vice President
195 Montague Street
Borough of Brooklyn, City of New York.

Date Effective: Effective March [illegible] 1974 under Decision No. [illegible] of Public Service Law [illegible] No. 26[illegible] [illegible] February [illegible] 1974 [illegible] 26507.

3 [illegible]
.00[illegible]/100

SERVICE CLASSIFICATION No. 4 — Continued

Minimum Charge:

During the cooling season, which is defined as being the period between May 1st and October 31st, both inclusive, $200.00, plus the applicable gas adjustment and franchise tax surcharge.

Terms of Payment:

Net cash.

Term:

Service under this Classification shall be for a period of at least one year from the date of application, and for yearly periods thereafter. Terminable by the consumer on two days' written notice to the Company, but subject to the consumer's performance of any unfulfilled obligation for the contract year in which such notice of termination is given; terminable by the Company on like notice to the consumer and likewise in the manner provided by law and the rules and regulations set forth in the Company's Rate Schedule, on file with the Public Service Commission.

Special Provisions:

Where water is incidentally heated in the air conditioning equipment, gas used for such purpose is available under this Classification.

Additional Charge:

Customers whose use of gas exceeds the permissible volumes set forth in sub-paragraphs (c) and (d) of paragraph 15 A in leaves 9A and 9B will be subject to an additional charge of nine (9) times the charge indicated in the terminal (lowest) block. The imposition of such additional charge shall not limit any rights of the Company to terminate gas service provided for in this Schedule for Gas Service.

P. S. C. No. 11—GAS
Twelfth Revised Leaf No. 24
Superseding Eleventh Revised Leaf No. 24
(Tenth Revised Leaf No. 24 Canceled)

THE BROOKLYN UNION GAS COMPANY

SERVICE CLASSIFICATION No. 4

YEAR-ROUND AIR CONDITIONING SERVICE

(NON-RESIDENTIAL)

Applicable to Use of Service for:

Available to any non-residential consumer upon written application for gas for the heating and cooling in common of the consumer's premises or such portion thereof as uses gas for heating and cooling in common, provided that such applicant shall guarantee to the Company a minimum revenue of not less than $200.00, plus the revenue from the applicable gas adjustment and franchise tax surcharge, during the cooling season which is defined as being the period between May 1st and October 31st, both inclusive. A separate meter will be installed for gas supplied under this Classification and the use of gas measured by this meter for other than year-round air conditioning is expressly prohibited.

Character of Service:

Natural gas (or in the case of emergency or for economy of operation, manufactured gas or a mixture of natural gas and manufactured gas) of not less than 1,000 B.T.U. per cubic foot, at pressure from 5-1/2 to 6 inches water column (approximately).
Continuous.

Rate:

During the months of May to October, both inclusive

First 300 cu. ft. or less per month $2.71
All over 300 cu. ft. per month .....$ .150 per C cu. ft.

During the months of November to April, both inclusive

First 300 cu. ft. or less per month $2.71
All over 300 cu. ft. per month .....$ .212 per C cu. ft.

Gas Adjustment Clause:

The charges set forth herein shall be subject to a gas adjustment per 100 cubic feet of gas supplied hereunder when changes from the base cost of 6.77 cents per 100 cubic feet of gas occur (as explained on General Information Leaf No. 11).

Franchise Tax Surcharge:

The rates and charges for gas supplied under all service classifications in the area known as the Fifth Ward of the Borough of Richmond shall be subject to a surcharge of 3.30%, reflecting payment required by the City of New York for grant of franchise.

Continued on next Leaf

Date of Issue: September 16, 1974

Issued by Charles L. Neumeyer, Senior Vice President
195 Montague Street
Borough of Brooklyn, City of New York.

Date Effective: October 16, 1974
Effective September 26, 1974, under authority of Public Service Commission, State of New York, Special Permission Order No. G-1662, dated September 24, 1974.

P. S. C. No. 11—GAS
Fifteenth Revised Leaf No. 21
Superseding Fourteenth Revised Leaf No. 21
(Thirteenth Revised Leaf No. 21 Canceled)

THE BROOKLYN UNION GAS COMPANY

SERVICE CLASSIFICATION No. 2

GENERAL SERVICE (NON-RESIDENTIAL)

Applicable to Use of Service for:
Any use of gas by any consumer of gas service for non-residential purposes.

Character of Service:
Natural gas (or in the case of emergency or for economy of operation, manufactured gas or a mixture of natural gas and manufactured gas) of not less than 1,000 B.T.U. per cubic foot, at pressure from 5-1/2 to 6 inches water column (approximately). Continuous.

Rate—Bi-monthly Billing:

First	600 cu. ft. or less per meter	$5.42
Next	9,400 cu. ft. per meter	$ .319 per C cu. ft.
Next	40,000 cu. ft. per meter	$ .260 per C cu. ft.
Next	50,000 cu. ft. per meter	$ .235 per C cu. ft.
Next	100,000 cu. ft. per meter	$ .215 per C cu. ft.
All over	200,000 cu. ft. per meter	$ .181 per C cu. ft.

Gas Adjustment Clause:
The charges set forth herein shall be subject to a gas adjustment per 100 cubic feet of gas supplied hereunder when changes from the base cost of 6.77 cents per 100 cubic feet of gas occur (as explained on General Information Leaf No. 11).

Franchise Tax Surcharge:
The rates and charges for gas supplied under all service classifications in the area known as the Fifth Ward of the Borough of Richmond shall be subject to a surcharge of 3.30%, reflecting payment required by the City of New York for grant of franchise.

Minimum Charge:
$5.42 per bi-monthly billing period, plus the applicable gas adjustment and franchise tax surcharge.

Terms of Payment:
Net cash.

Term:
Terminable by consumer on two days' written notice to the Company, and by the Company in the manner provided by law and the rules and regulations set forth in the Company's Rate Schedule on file with the Public Service Commission.

Special Provisions:
Gas at pressures up to one pound, where reasonably available, will be furnished provided the consumer shall pay the cost of connection between the Company's transmission system and his premises. See General Information, Leaf No. 10, Paragraph 18.

Additional Charge:
Customers whose use of gas exceeds the permissible volumes set forth in sub-paragraphs (c) and (d) of paragraph 15 A in leaves 9A and 9B will be subject to an additional charge of nine (9) times the charge indicated in the terminal (lowest) block. The imposition of such additional charge shall not limit any rights of the Company to terminate gas service provided for in this Schedule for Gas Service.

Date of Issue: September 16, 1974

Issued by Charles L. Neumeyer, Senior Vice President
195 Montague Street
Borough of Brooklyn, City of New York.

Date Effective: October 16, 1974
Effective September 26, 1974, under authority of Public Service Commission, State of New York, Special Permission Order No. G-1652, dated September 24, 1974.

P. S. C. No. 11—GAS
Sixteenth Revised Leaf No. 24
Superseding Fifteenth Revised Leaf No. 24
(Thirteenth Revised Leaf No. 24 Canceled)

THE BROOKLYN UNION GAS COMPANY

SERVICE CLASSIFICATION No. 4

YEAR-ROUND AIR CONDITIONING SERVICE

(NON-RESIDENTIAL)

Applicable to Use of Service for:

Available to any non-residential consumer upon written application for gas for the heating and cooling in common of the consumer's premises or such portion thereof as uses gas for heating and cooling in common, provided that such applicant shall guarantee to the Company a minimum revenue of not less than $200.00, plus the revenue from the applicable gas adjustment and franchise tax surcharge, during the cooling season which is defined as being the period between May 1st and October 31st, both inclusive. A separate meter will be installed for gas supplied under this Classification and the use of gas measured by this meter for other than year-round air conditioning is expressly prohibited.

Character of Service:

Natural gas of not less than 1,000 B.T.U. per cubic foot (or in the case of emergency or for economy of operation, manufactured gas or a mixture of natural gas and manufactured gas of not less than 975 B.T.U. per cubic foot) at pressure from 5½ to 6 inches water column (approximately).
Continuous.

Rate:

During the months of May to October, both inclusive

First 300 cu. ft. or less per month $3.39
All over 300 cu. ft. per month ..... $ .271 per C cu. ft.

During the months of November to April, both inclusive

First 300 cu. ft. or less per month $3.39
All over 300 cu. ft. per month ..... $ .313 per C cu. ft.

Gas Adjustment Clause:

The charges set forth herein shall be subject to a gas adjustment per 100 cubic feet of gas supplied hereunder when changes from the base cost of 12.50 cents per 100 cubic feet of gas occur (as explained on General Information Leaf No. 11).

Franchise Tax Surcharge:

The rates and charges for gas supplied under all service classifications in the area known as the Fifth Ward of the Borough of Richmond shall be subject to a surcharge of 3.30%, reflecting payment required by the City of New York for grant of franchise.

Continued on next Leaf

Date of Issue: October 21, 1975

Issued by Charles L. Neumeyer, Senior Vice President
195 Montague Street
Borough of Brooklyn, City of New York.

Date Effective: November 30, 1975
Effective October 29, 1975 under authority of Public Service Commission, State of New York, Special Permission Order No. G-1752, dated October 28, 1975.

SERVICE CLASSIFICATION No. 4 — Continued

Minimum Charge:

During the cooling season, which is defined as being the period between May 1st and October 31st, both inclusive, $200.00, plus the applicable gas adjustment and franchise tax surcharge.

Terms of Payment:

Net cash.

Term:

Service under this Classification shall be for a period of at least one year from the date of application, and for yearly periods thereafter. Terminable by the consumer on two days' written notice to the Company, but subject to the consumer's performance of any unfulfilled obligation for the contract year in which such notice of termination is given; terminable by the Company on like notice to the consumer and likewise in the manner provided by law and the rules and regulations set forth in the Company's Rate Schedule, on file with the Public Service Commission.

Special Provisions:

Where water is incidentally heated in the air conditioning equipment, gas used for such purpose is available under this Classification.

Additional Charge:

Customers whose use of gas exceeds the permissible volumes set forth in sub-paragraphs (c) and (d) of paragraph 15 A in leaves 9A and 9B will be subject to an additional charge of nine (9) times the charge indicated in the terminal (lowest) block. The imposition of such additional charge shall not limit any rights of the Company to terminate gas service provided for in this Schedule for Gas Service.

E326

Trial Exhibit EE

Statement No. 62

STATEMENT OF GAS ADJUSTMENT

THE BROOKLYN UNION GAS COMPANY

(Issued under authority of 16 NYCRR 270.55 and 270.57)

Effective November 1, 1975

Applicable to Billings Under Service Classifications Nos. 1, 2, 3, 4 and 7 of P.S.C. No. 11—GAS

Average Cost of Gas

The average cost of gas per 100 cubic feet (as defined on General Information Leaf No. 11 of P.S.C. No. 11—GAS) determined on October 27, 1975 by applying the rates and charges of the Company's gas suppliers which are in effect or will be in effect on the date the gas adjustment becomes effective to the quantities of gas supplied to the Company during the twelve months ended September 30, 1975, is ..... 14.71 Cents

Base Cost of Gas

The base cost per 100 cubic feet of gas sold for determining the gas adjustment is ..... 12.40 Cents

Gas Adjustment

The resulting gas adjustment per 100 cubic feet of gas is ..... 2.46 Cents

Credit per 100 cubic feet of gas sold, pursuant to "Refund Provision" on General Information Leaf No. 12A of P.S.C. No. 11—GAS:

Amount applicable during the period December 1, 1974 through November 30, 1975 referable to refunds received from the following:

(a) Texas Eastern Transmission Corporation for the periods: November 10, 1967 through June 30, 1967; January 1, 1962 through December 31, 1963; May 16, 1970 through July 13, 1972; and November 15, 1971 through April 30, 1974

(b) Tennessee Gas Pipeline Company for the periods January 10, 1971 through July 15, 1973 and November 10, 1971 through July 15, 1973 ..... 0.00 Cents

Commencing November 1, 1975, and thereafter until changed the amount of gas adjustment per 100 cubic feet of gas under Service Classifications Nos. 1, 2, 3, 4 and 7 of P.S.C. No. 11—GAS will be ..... 2.46 Cents

Applicable to Billings Under Service Classification No. 6 of P.S.C. No. 11—GAS

Average Commodity Cost of Gas

The average commodity cost of gas per 100 cubic feet (as defined on General Information Leaf No. 12 of P.S.C. No. 11—GAS) determined on October 27, 1975 by applying the commodity rates of the Company's gas suppliers which are in effect or will be in effect on the date the gas adjustment becomes effective to the quantities of commodity gas supplied to the Company during the twelve months ended September 30, 1975, is ..... 12.46 Cents

Base Commodity Cost of Gas

The base cost per 100 cubic feet of gas sold for determining the gas adjustment is ..... 9.95 Cents

Gas Adjustment

Commencing November 1, 1975, and thereafter until changed the amount of the gas adjustment per 100 cubic feet of gas under Service Classification No. 6 of P.S.C. No. 11—GAS will be ..... 2.66 Cents

Filed for THE BROOKLYN UNION GAS COMPANY

By Charles L. Neumeyer
Senior Vice President

October 28, 1975

Trial Exhibit FF, Excerpts
From Thomas Hafner's
Deposition

[Note: Defendants' Trial Exhibit FF had been inadvertently marked as Defendants' Exhibit EE.]

Q Do you know whether anybody was present when you and Mr. Kelly had this conversation?

A No, I don't.

Q Did you have more than one conversation on this subject?

A Yes, I am sure we did.

Q Did Mr. Kelly come to you and say, "Tom, we have got some problems, would you look at the lease and see if we have got a lawsuit here," or words to that effect?

A That would seem reasonable. I can't remember a specific occasion that he did that, no, but that is probably what happened.

Q Between the time that Mr. Kelly first sent you the lease in early 1973 and the time of this conversation, the one you have been testifying about where you gave him your opinion, your off-the-cuff opinion, did you and Mr. Kelly ever discuss the possibility of a lawsuit against the Staten Island Mall?

A Not that I can remember, no.

Q Do you recall discussing that subject with anybody connected with Magnavox or Magnaleasing during that time period; the time period I am talking about was when you first saw the lease in early 1973 to the time

1 that you and Mr. Kelly had this discussion?

2 A No, I cannot remember any such discussion.

3 Q Prior to the signing of the lease, I

4 believe it was signed sometime in April 1973, whose

5 responsibility was it in Magnavox or Magnaleasing to

6 review the lease and pass on the lease?

7 A There were several people who had responsibility

8 for passing on leases for various aspects of their--

9 Q Who were these people? I am talking

10 about this lease specifically.

11 A Okay. Mr. Kelly was in charge of the business

12 negotiations. Mr. Tom Galligan is a tax lawyer who

13 specializes in state and local property tax matters.

14 Mr. George Phillips is our corporate insurance manager,

15 and I along with my colleagues in different areas of

16 our company are responsible for the legal review of

17 any leases.

18 Q So you were responsible for the legal

19 review of this lease?

20 A Yes.

21 Q Was there any reason other than what you

22 have already stated, you didn't feel like reading an

23 eighty-page lease, that you didn't read this lease?

24 A Well, Jack and I had discussed and I had reviewed

25

1 personally or--

2 MR. BERGEN: I am talking about Magnavox.

3 MR. BEANE: Or Magnaleasing.

4 MR. BERGEN: I don't see the distinction

5 there.

6 MR. BEANE: I know you don't but I do and

7 I don't want to get into that battle again.

8 MR. BERGEN: Nobody else does either, I

9 I believe, on your side of the table.

10 A In the sense that we were asking the advice of

11 an attorney as to what, if any, possibilities there

12 were, I think you can say yes. In the sense that we

13 had made a decision to file one, the answer is no.

14 Q Do you know when the decision was reached

15 to file this action, and by this action I mean Magna-

16 leasing against the Staten Island Mall?

17 A Yes.

18 Q When?

19 A I believe it was on November 20.

20 Q November 20?

21 A Yes, sir.

22 Q Can you tell us why you are so positive

23 about that date?

24 A Because I reviewed my file.

25

minute, just for the purpose of identifying what it was?

MR. BERGEN: Yes.

(Discussion off the record.)

MR. BEANE: We will look for it. I will go back to my office and look for it.

Q Do you have copies of these files in your office, the files that you say Keane & Butler has?

A In the law department, yes.

Q What did you send to Keane & Butler; just Xerox everything and send it to them and retain a copy for your files?

A I don't remember whether we sent them and they copied them and sent them back or what, but I know that these were all made available to them.

Q At the time of this memo, July 1, 1974, was it your belief that, "We don't have a strong enough case to recommend legal action"?

A Based on the--yes.

MR. BERGEN: Do you want to take a break and we can see if we can get some coffee?

(At this time a brief recess was taken.)

BY MR. BERGEN:

Q Mr.Hafner, can you tell us what the basis

A I don't remember.

Q That's all I am asking is do you remember.

A I don't remember.

Q Do you recall discussing it with Mr. Michaelson?

A No.

Q Do you recall discussing the memo with anybody at Magnavox or Magnaleasing?

A No.

Q Do you recall discussing with Mr. Kelly suing Morris Glicklich?

A No specific recollection. I have a vague general feeling.

Q Did there come a time subsequent to this memo that your belief that, "We don't have a strong enough case to recommend legal action," changed?

A Yes.

Q When?

A Sometime in November of 1974.

Q What happened to change that belief?

A We consulted in depth with counsel.

Q Did any facts change between July 1, 1974 and the time you changed your belief to cause you to change your belief?

A No.

Q What caused you to change your belief?

A Opinion of counsel.

Q Was this a written opinion?

A Yes.

Q Was this written opinion sent to you?

A Yes.

Q Were copies sent to anybody?

A Yes.

Q Who?

A Mr. Rozel and Mr. Kelly.

Q Who is Mr. Rozel?

A He is the general counsel of Magnavox.

Q You say between the time you arrived at this belief that you don't have a strong enough case to recommend legal action, and sometime in November, none of the facts upon which you based your belief changed?

A No.

Q What did change to cause you to change your belief; was it solely the opinion of counsel?

A Yes.

Q Did the fact that the expenses at the Mall continued to mount cause you to change your belief?

A No.

MR. BEANE: Right, the record can reflect that.

MR. BERGEN: Good.

(Conference between the witness and his counsel.)

MR. BERGEN: Are you finished, Mr. Beane?

MR. BEANE: Yes, I am finished.

Q In an earlier memo Mr. Kelly said that it was your belief and his belief that, "we don't have a strong enough case to recommend legal action." That's Defendants' Exhibit 6, correct?

A Yes.

Q And you have already testified that that was your belief. Was it also your opinion at or about July 22, 1974 that an action against the landlord for misrepresentation wouldn't be successful?

A May I see both memos, please? I honestly don't remember that (a), as Mr. Kelly has phrased it, that that was my opinion.

Q What was your opinion at or about July 22, 1974?

A I think it was as stated in the July 1 memo, that we didn't have a strong enough case to recommend legal action.

what you meant.

Do you know whether at the time of this memo, the July 22 memo, it was Mr. Kelly's opinion that an action against the landlord for misrepresentation wouldn't be successful?

A Other than what he says in the memo, no.

Q Moving on to the New York attorneys, is Mr. Kelly's statement in the July 22, 1974 memo that it is the opinion of the New York attorneys consulted by you that, "such an action wouldn't be successful"; is that an accurate statement?

A I am trying to remember whether it was or not. I don't remember getting an opinion at that time. We had discussions.

Q Is there anything inaccurate about that statement?

A I really can't recollect whether that was accurate at the time or not.

Q Can you tell me what happened between the July 22 memo and the date the decision was made to commence this action, which you have testified was somewhere around November 20, 1974--

A Yes, I can.

Q --to change the opinion that such an

1 action ouldn't be successful?

2 MR. BEANE: Wait, whose opinion?

3 MR. BERGEN: Mr. Kelly's,first of all.

4 A First of all, as Mr. Beane has indicated in

5 earlier comments, I am not a litigator, I am not a

6 real estate expert and I never did, in fact I still have

7 not, thoroughly researched the law governing the facts

8 of that case.

9 MR. BEANE: Mr. Bergen, when you say, "What

10 happened,"are you asking about facts; what are

11 you asking about?

12 MR. BERGEN: The question is very clear.

13 Do you want to read it back? I don't see why

14 you have to interrupt him right in the middle of

15 an answer.

16 MR. BEANE: I am not interrupting him.

17 A (Continuing) One of the things that happened

18 between that time and the November decision is the con-

19 ference Mr. Kelly and Mr. Fitzgerald and I had in New

20 York.

21 Q Anything else?

22 A I believe Mr. Kelly conferred after that time

23 with Mr. Fitzgerald.

24 Q Did you?

25

A No, not in New York and I have no specific recollection of any particular--

Q On the telephone?

A It's possible.

Q In Fort Wayne?

A I would be in Fort Wayne.

Q No, I mean did you confer with him in person in Fort Wayne?

A No.

MR. BERGEN: You are shaking your head, Mr. Beane.

MR. BEANE: Off the record.

(Discussion off the record.)

Q Do you know when this other meeting between Mr. Fitzgerald and Mr. Kelly took place?

A Sometime between the time Mr. Kelly and I were here and the time the decision was reached.

Q Did anything else happen between the July 22 memo and November 20?

A We had been sued.

Q Did any of the facts change?

A No.

Q Did any new facts come to light?

A No.

Q From the time you first were consulted by Mr. Kelly to the commencement of the action, to your knowledge did any new facts come to light with respect to this problem between the Staten Island Mall and Magnaleasing?

A No. I am not sure what you mean by "come to light".

Q Did Magnavox or Magnaleasing learn any new facts?

A Not that I remember.

THE WITNESS: May I confer with counsel for a minute and let the record so reflect?

MR. BERGEN: Sure.

(Conference between the witness and his counsel.)

Q Mr. Hafner, what was your opinion in July 22, on or about July 22, 1974 with respect to an action against the landlord for misrepresentation?

MR. BEANE: Mr. Bergen, I will let him answer it. You have asked him that several times. I just want the record to be clear that--

MR. BERGEN: No, I haven't asked him this question before.

MR. BEANE: I think you have asked it

Q You say you reviewed the operating agreement?

A No, no, I said I reviewed the file, my file. I have never seen the operating agreement.

Q Where was it referred to in your file other than in the complaint?

A That is the only place I can remember that it is.

Q Do you know what the operating agreement is?

A I know that it is allegedly an agreement among the Mall and several of the tenants.

Q Several of the tenants?

A Yes, I believe.

Q Do you know what the basis is for the allegation in Pargraph 15 of the complaint which is Exhibit 7 that,"The representations as to tax and common area maintenance charges were known to be false when they were made"?

A Personally, no.

Q Do you know who would know that?

A I assume that if anybody would it would be Mr. Kelly or maybe that's the way the complaint was drafted.

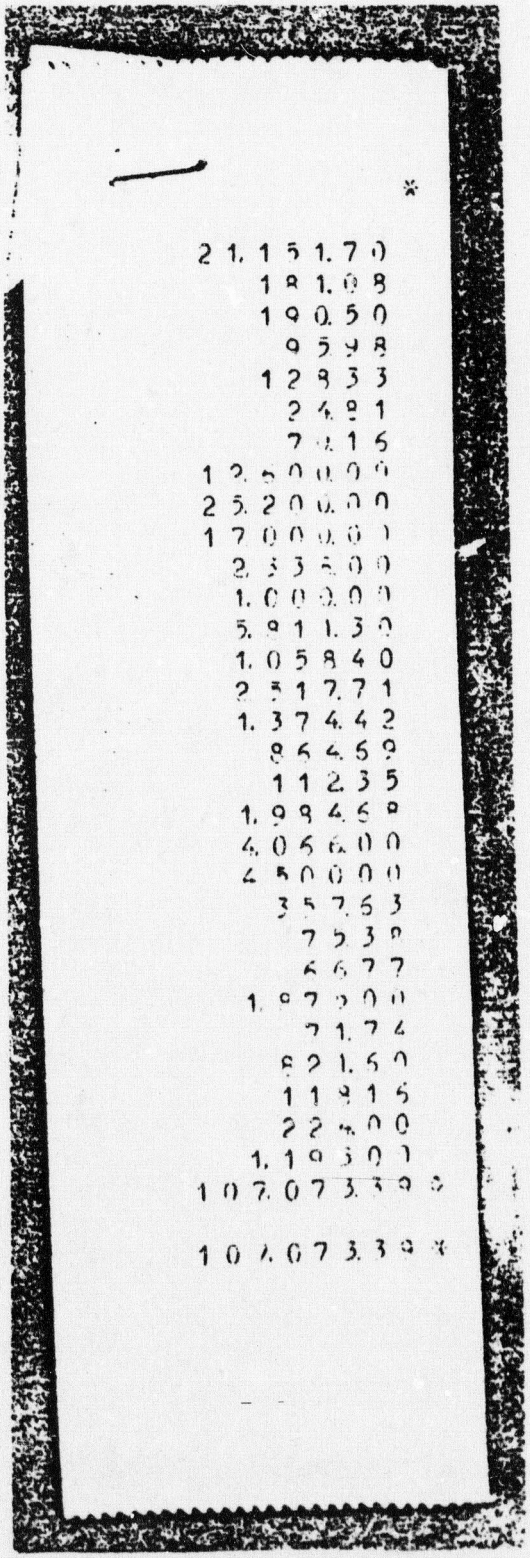
Q Are you an officer of Magnaleasing, Inc.?

A I am assistant secretary, an assistant secretary.

PLAINTIFF'S REFERENCE EXHIBITS

E339

Reference Exhibit 1, Magnaleasing Leasehold Improvements



*
21,151.70
181.08
190.50
959.8
12833
249.1
7,216
12,500.00
25,200.00
17,000.00
2,335.00
1,000.00
5,911.30
1,058.40
2,517.71
1,374.42
864.59
1123.5
1,984.9
4,066.00
4,500.00
357.63
753.9
667.7
1,979.00
71.74
821.50
1191.5
22,500.00
1,193.01
107,073.39
104,073.39 *

Reference Exhibit 1

CASE 3/20 BUFF

Magnaleasing
Leasehold Improvement

P01

EXHIBIT 1
ID 8/31/76 W.B.

	Vendor	Invoice #	Amount $	Check #	Date Paid
1	Store Craft	Order # 92665	$ 21151.70	691678	10/73
2			181.08	719233	3/74
3			190.50	719233	3/74
4			95.28	719233	3/74
5			128.33	710567 P	1/74
6			24.21	709123	1/74
7			70.16	710567 P	
8					
9	Kingsboro Constr.		12600	685502	9/73
10			25200	686598	8/73
11			17000	697064	11/73
12			2338	701405	12/73
13			1000	707598	1/74
14			5841.30	739584	6/74
15			1058.40	709011	1/74
16	Lambert Enterprises		2517.21	688935 P	10/73
17			1374.42	697730 P	11/73
18			864.61	703855 P	12/73
19			112.35	703855 P	12/73
20			1984.68	701125	12/73
21	Kirby-Ryan		4066	701818	12/73
22					
23	Strauss Assoc		4500	M54877 P	8/73
24		2185	357.63	M55852 P	9/73
25					
26	Lighting Center		75.38	703873	12/73
27			66.27	721297 P	3/74
28					
29	Blair Electric		1875	693942	11/73
30	Permagent		71.74		
31					
32	Staten Island Mall		821.62	M53543	7/73
33			118.16	687196	7/73
34	Mural Transport Inc		224	693862	11/73
35			193	705307	1/74
			$ 107073.37		

E341

Reference Exhibit 2, Magnavox Check For $5,056.81

THE **Magnavox** COMPANY

Fort Wayne, Indiana

N 688935 1-8/210 399

DATE		
10	08	73

TO THE ORDER OF

LAMBERT ENTERPRISES
313A BURLINGTON
WESTERN SPGS IL 60558

PAY | AMOUNT | **5,056.81

THE **Magnavox** COMPANY

J. M. Whelan

FIRST NATIONAL CITY BANK, 399 PARK AVE., NEW YORK, N. Y.

⑈688935⑈ ⑆0210⑈0008⑆ 0280008 7⑈ ⑈0000505681⑈

E342

Reference Exhibit 2

M2116-5 REV. 11-70

THE MAGNAVOX COMPANY

PLEASE REFER TO THIS NUMBER → N 688935

INVOICE NUMBER	MO. DAY		INVOICE AMOUNT	DISCOUNT	INVOICE NUMBER	MO. DAY		INVOICE AMOUNT	DISCOUNT
1583	726	Z	2,517.71		1584	726	Z	2,539.10	
			VENDOR	#515249	CHECK AMT				5,056.81

RWZX - The Magnavox Company, Fort Wayne, Indiana
G - The Magnavox Company of Tennessee, Greeneville, Tenn.
J - The Magnavox Company of Tennessee, Jefferson City, Tenn.
A - The Magnavox Company of Tennessee, Andrews, N. C.
M - Magnavox Systems, Inc., Urbana, Ill.
F - The Magnavox Company of Tennessee, Flora, Miss.
C - The Magnavox Company of Tennessee, Johnson City, Tenn.
U - The Magnavox Company, Urbana, Illinois
H - The Magnavox Company of Tennessee, Arden, N. C.

DATE		
10	08	73

PAY **5,056.81

LAMBERT ENTERPRISES.
313A BURLINGTON
WESTERN SPGS IL 60558

C

VOUCHER COPY

PLF

EXHIBIT 2
8/31/76 W.B.

E343

Reference Exhibit 2

Carpeting Consultants
LAMBERT ENTERPRISES, INC.

313 A Burlington [redacted] • Western Springs, Illinois 60558 312/246-2988 • 312/337-3193

SOLD TO: The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804
ATTENTION Mr. Whitey Welbaum

DATE BILLED 7/26/73

INVOICE NO. 1583

TERMS: 15 days

F.O.B. POINT Mill

X2 87287 JLR

Re: Magnavox H.E.C., Staten Island Mall

ITEM:

367 square yards Lees' Opening Nite #63 @$6/sq. yd.	$2,202.00
40 feet metal @$1/foot	40.00
	$2,242.00
4% New York State Sales Tax	94.12
3% County Tax	70.59
	$2,406.71
Freight	111.00
	$2,517.71

X R W Z		INV. RECD JUL 27 1973	
Vendor # 515279		Due Date 8/8	Disc. % 0
Price	SR.	Disc. $	Acct. No. 752099
FOB	APP.	Rel. No.	

Labor and tax on labor to be billed upon completion.

E344

Reference Exhibit 2

Carpeting Consultants
LAMBERT ENTERPRISES, INC.

DBA Ellington [redacted] • Western Springs, Illinois 60558 312/246-2988 • 312/337-3193

SOLD TO: The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804
ATTENTION Mr. Whitey Welbaum

DATE BILLED 7/26/73

INVOICE NO. 1584

TERMS: 15 days

F.O.B. POINT Mill

X2 87288 JLR

Re: Magnavox H.E.C., Mesquite, Texas

ITEM:

367 square yards Lees' Opening Nite #11 @$6/sq. yd.	$2,202.00
40 feet metal @$1/foot	40.00
	$2,242.00
5% Texas State Tax	112.10
Freight	185.00
	$2,539.10

3781.01
M40745

Labor to be [illegible] upon completion.

6 HP

X R W Z		INV. RECD JUL 27 1973	
Voucher 515749		Due Date 10/8	Disc % 2
Price	Bal.	Disc. $	Acct. No. 752099
FOB	APP.	Rel. No.	

11/5/73

Reference Exhibit 3

Plaintiff's Reference Exhibit 3 is Joint Statement of Stipulated and Disputed Facts, which appears on page E1 of this Exhibit Volume.

E346

Reference Exhibit 4, Magnaleasing
Invoices and Checks

MAGNALEASING INC.

1700 MAGNAVOX WAY
FORT WAYNE, INDIANA 46804

INVOICE 627

PLF
EXHIBIT 4
to 9/21/76 W.B.

SOLD TO: Mr. Wade Gaylor
Gaylord's Magnavox HEC
1066 Town East Mall
Mesquite, Texas 75149

SHIP TO: August 11, 1976

TERMS: NO ANTICIPATION ALLOWED

CUSTOMER'S ORDER NUMBER	CUSTOMER'S ORDER DATE	MAGNAVOX ORDER NUMBER	MAGNAVOX ORDER DATE	SHIPPED VIA	SALESMAN	PACKING SLIP

CUSTOMER CODE	TERRITORY NUMBER	COMMISSION CODE	ACCOUNT NUMBER

QTY.	PART NO.	DESCRIPTION	UNIT PRICE	AMOUNT
		Town East Mall Occupancy Expense		
		July Sales $ 29,019.95 x .07 = $ 2,031.40		
		or		
		$1,500.00		
		whichever is the greater.		
		Amount paid		$ 2031.40

THE TEXAS BANK — A First City Bancorporation Member

INMAN'S TELEVISION
10230 E. NORTHWEST HIGHWAY 341-9460
DALLAS, TEXAS 75238

1307

Aug 13 19 76 32-77 1110

PAY TO THE ORDER OF Magna Leasing Inc. $2,031.40

THE SUM 2031 DOLLARS 40 CTS DOLLARS

BY ENDORSEMENT THIS CHECK WHEN PAID IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

for GAYLORD'S MAGNAVOX
TOWN EAST MALL
DALLAS, TX.

INMAN'S TELEVISION

⑆1110⑈0077⑆ ⑈1 5723 0⑈

Seller represents that with respect to the production of the articles and/or the performance of the services covered by this invoice, it has fully complied with Section 12(c) of the Fair Labor Stand-

E347

Reference Exhibit 4

MAGNALEASING INC.

INVOICE 1-115
Apr. 23, 74

SOLD TO
Mr. Lou DeBise
Milrose Magnavox Home Entertainment Center

Laurel Mall
Hazelton, Pa. 18201

SHIP TO

NO ANTICIPATION ALLOWED

TERMS	CUSTOMER'S ORDER NUMBER	CUSTOMER'S ORDER DATE	MAGNAVOX ORDER NUMBER	MAGNAVOX ORDER DATE	SHIPPED VIA	SALESMAN	PACKING SLIP

CUSTOMER CODE	TERRITORY NUMBER	COMMISSION CODE	ACCOUNT NUMBER

QTY.	PART NO.	DESCRIPTION	UNIT PRICE	AMOUNT
		Monthly Amortization of Construction and Fixturing Costs for Laurel Mall Home Entertainment Center, Hazelton, Pennsylvania.		
		Payment No. 115----------		$ 684.45

BY ENDORSEMENT, THIS CHECK WHEN PAID IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT.

DATE		AMOUNT
B 23-50-04		
Inv 1-115		

Milrose Magnavox
HOME ENTERTAINMENT CENTER
LAUREL MALL
HAZELTON, PA. 18201

1502
May 2 1974 60-223/313
$684.45

PAY TO THE ORDER OF Magnaleasing Inc

$ 684.45 DOLLARS

PEOPLES FIRST National Bank and Trust Company
HAZELTON PENNSYLVANIA

⑆0313⑆0233⑈ 03 10006 5⑈

Seller represents that with respect to the production of the articles and/or the performance of the services covered by this invoice, it has fully complied with Section 12(a) of the Fair Labor Standards Act of 1938, as amended. [illegible] established under applicable regulations issued pursuant to the Defense Production Act of [illegible]

E348

Reference Exhibit 4

MAGNALEASING INC.

1700 MAGNAVOX WAY
FORT WAYNE, INDIANA 46804

INVOICE 919

SOLD TO

Mr. Walter Scott
Scott's Magnavox H.E.C.
DeSoto Square Shopping Center
Bradenton, FL

SHIP TO

September 19, 1974

TERMS NO ANTICIPATION ALLOWED

CUSTOMER'S ORDER		MAGNAVOX ORDER		SHIPPED VIA	SALESMAN	PACKING SLIP
NUMBER	DATE	NUMBER	DATE			

CUSTOMER CODE	TERRITORY NUMBER	COMMISSION CODE	ACCOUNT NUMBER

QTY.	PART NO.	DESCRIPTION	UNIT PRICE	AMOUNT
		To bill you for monthly amortization charges under the terms of our special agreement.		
		Payments now due:		
		June $600.00		
		July $600.00		
		August $600.00		
		September $600.00		
		Total Due $2,400.00		$2,400.00

3-01-01 B
MAGNALEASING

SCOTT'S MAGNAVOX CENTER
PHONE 747-6954
DE SOTO SQUARE MALL
BRADENTON, FLA. 33505

430

63-865
631

Sept. 18, 1974

PAY TO THE ORDER OF Magnaleasing Inc. $600.00

THE SUM 600 DOLS 00 CTS DOLLARS

FIRST COMMERCIAL BANK OF MANATEE COUNTY
BRADENTON, FLORIDA 33507

SCOTT'S MAGNAVOX CENTER

Dorothy Scott

June 1974 Payment

⑈0631⑈0865⑆ 05 163 2⑈

Seller represents that with respect to the production of the articles and/or the performance of the services covered by this invoice, it has fully complied with Section 12(a) of the Fair Labor Stand-

E349

Reference Exhibit 4

MAGNALEASING INC.

1700 MAGNAVOX WAY
FORT WAYNE, INDIANA 46804

INVOICE
815

SOLD TO
Mr. Dallas M. Pistol
Pistol's Delco TV & Stereo
1345 S. Broadway
Denver, Colorado 80210

SHIP TO

February 12, 1976

TERMS

NO ANTICIPATION ALLOWED

CUSTOMER'S ORDER		MAGNAVOX ORDER		SHIPPED VIA	SALESMAN	PACKING SLIP
NUMBER	DATE	NUMBER	DATE			

CUSTOMER CODE	TERRITORY NUMBER	COMMISSION CODE	ACCOUNT NUMBER

QTY.	PART NO.	DESCRIPTION	UNIT PRICE	AMOUNT
		To bill you for 1975 Lease Guaranty Fee as provided by your sub lease agreement.		
		$27,000.00 x .0025 =		$67.50

PISTOL'S DELCO T.V. & STEREO
DELAWARE MFG. & SUPPLY CO.

B-03-01-01

No. 006843

1345 SO. BROADWAY - PHONE 744-6416 - DENVER, COLO. 80210 MARCH 16 19 76

23-117
1020

PAY THE SIXTY-SEVEN DOLLARS 50 CTS $**67.50**

TO THE ORDER OF
MAGNALEASING, INC.
1700 Magnavox Way
Fort Wayne, Ind. 46804

PISTOL'S DELCO T.V. & STEREO

SOUTH COLORADO NATIONAL BANK
DENVER, COLORADO

⑆1020⑈0117⑆ 791⑈38⑈5⑈

...the sale and/or the performance of the services covered by this invoice, it has fully complied with Section 12(a) of the Fair Labor Stand-

E350

Reference Exhibit 4

MAGNALEASING INC.

1700 MAGNAVOX WAY
FORT WAYNE, INDIANA 46804

INVOICE 1-170
May 24, 1974

SOLD TO: Franklin Magnavox Home Entertainment Center, Inc.
1066 Town East Mall
Mesquite, Texas 75149

SHIP TO:

TERMS: NO ANTICIPATION ALLOWED

CUSTOMER'S ORDER		MAGNAVOX ORDER		SHIPPED VIA	SALESMAN	PACKING SLIP
NUMBER	DATE	NUMBER	DATE			

CUSTOMER CODE	TERRITORY NUMBER	COMMISSION CODE	ACCOUNT NUMBER

QTY.	PART NO.	DESCRIPTION	UNIT PRICE	AMOUNT
		Amortization for Construction and Fixturing Cost for Home Entertainment Center in Town East Mall, Mesquite, Texas.		
		Funds Expended---------- $ 69,951.91		
		Less Downpayment---------- 4,000.00		
		$ 65,951.91		
		Principle Payment---------- 585.91		
		$ 65,366.00		
		Payment No. 170 (May)----------		$ 614.25

03 01 01 Bank of Mesquite 636

5-24 19 74

Pay TO THE ORDER OF MAGNALEASING, INC. $614.25

Six Hundred Fourteen [illegible] DOLLARS

F. M., INC.
DBA FRANKLIN'S MAGNAVOX H.E.C.

F. M., INC.
DBA FRANKLIN'S MAGNAVOX H.E.C.
1066 TOWN EAST MALL
MESQUITE, TEXAS 75149

E351

Reference Exhibit 4

B 03 01 01 Magnaleasing

Regal Magnavox

911 W. ST. GEORGE AVENUE
LINDEN, NEW JERSEY 07036
BEL-MART STORES, INC.

№ 06611

55-2
212

CHECK NO.	DATE	AMOUNT OF CHECK
6,611	JAN 2	$500.00

PAY TO THE ORDER OF MAGNALEASING INC

FIRST NATIONAL STATE BANK OF NEW JERSEY
SO. IRVINGTON OFFICE IRVINGTON, N. J.

AUTH. SIG.

⑆0212⑈0002⑆ 105⑈028122 1⑈

E352

Reference Exhibit 4

MAGNALEASING INC.

1700 MAGNAVOX WAY
FORT WAYNE, INDIANA 46804

INVOICE 607M

August 28, 1975

SOLD TO
Vetter's Magnavox Hom
Entertainment Center
2523 Central Ave.
Columbus, IN 47201

SHIP TO

TERMS — NO ANTICIPATION ALLOWED

CUSTOMER'S ORDER NUMBER	CUSTOMER'S ORDER DATE	MAGNAVOX ORDER NUMBER	MAGNAVOX ORDER DATE	SHIPPED VIA	SALESMAN	PACKING SLIP

CUSTOMER CODE	TERRITORY NUMBER	COMMISSION CODE	ACCOUNT NUMBER

QTY.	PART NO.	DESCRIPTION	UNIT PRICE	AMOUNT
		To bill you for occupancy expense at Castleton Square showroom at 8% of monthly retail sales		
		July Sales $35,338.15		
		X .08		
		$ 2,827.05 -- --	-- -- -- --	$2,827.05

MAGNALEASING B 83-84-02

VETTER'S HOME ENTERTAINMENT CENTRE
2523 CENTRAL AVENUE
COLUMBUS, INDIANA 47201

71-234
749

No. 5746
DATE 10-10-75

PAY TO THE ORDER OF Magnaleasing Inc. $ 2657.60

THE SUM 265 7 DOLS 60 C

VETTER'S HOME ENTERTAINMENT CENTRE

IRWIN UNION BANK AND TRUST CO.
COLUMBUS, INDIANA

⑆0749⑈0234⑆ 3 890⑈368 8⑈

Color represents 1

...able mandations issued pursuant to the Uniform Program ...

Reference Exhibit 5

Plaintiff's Reference Exhibit 5 is Lease dated May 4, 1973 between Staten Island Mall and Magnaleasing, which appears on page E93 of this Exhibit Volume.

Reference Exhibit 6, "Leasehold Improvement - Damages"

Pls Ex. 6
5/3/76

Leasehold Improvement - Damages

Original Cost =	$	107,073
Less L/L allowance =	−	7252
	$	99,821

Less Depreciation:

1-74 to 12-74	−	6655	$16,637
1-75 to 12-75	−	6655	
1-76 to 6-76	−	3327	
	$	83,184	
+ Interest		13,725	
	$	96,909	

Pls Ex 6A
3/31/76

Reference Exhibit 6A, "Leasehold Improvements - Interest"

Leasehold Improvements - Interest

(107,073 - 7,252 = 99,821)

1/74 to 12/74

99,821
- 6655 depreciation
93,166 } ÷ 2 = $96,494 AVG. BAL
99 821
x .06
$5,790.

1/75 to 12/75

93,166
- 6655 depreciation
86 511 } ÷ 2 = $89,838 AVG. BAL
93 166
x .06
$5,390.

1/76 to 6/76

86 511
- ~~6655~~ 3327 depreciation
83,184 ~~79,856~~ } ÷ 2 = ~~$83,184~~ $84,847 AVG. BAL
86 511
x .06
5091 ~~$499~~ x 6/12 = $
~~2,495~~ 2545
$

Total Interest $13,~~[illegible]~~ 725

Reference Exhibit 7 and 7A (Revised - No. 2) -
Schedule of Common Area Overpayments

PLAINTIFF'S REVISED EXHIBITS 7 AND 7A
No. 2

Schedule of Common Area Overpayment
Staten Island Mall

Date	Billed By S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
8-73	137.97	137.94	-	137.97	-
9-73	179.95	180.40	-	179.95	-
10-73	179.95	180.40	-	179.95	-
11-73	179.95	180.40	-	179.95	-
12-73	179.95	180.40	179.95	-	-
1-74	179.95	180.40	179.95	-	-
Magnaleasing Overpayment 8-73 to 1-74 . . . . . (3,608 sq. ft. x .60 per sq. ft. ÷ 12 = 180.40 per mo.)					-
2-74	779.59	207.46	179.95	599.64	572.13
3-74	779.59	207.46	179.95	599.64	572.13
4-74	779.59	207.46	179.95	599.64	572.13
5-74	779.59	207.46	179.95	599.64	572.13
6-74	779.59	207.46	179.95	599.64	572.13
7-74	779.59	207.46	179.95	599.64	572.13
8-74	779.59	207.46	179.95	599.64	572.13
9-74	779.59	207.46	179.95	599.64	572.13
10-74	779.59	207.46	-	779.59	572.13
11-74	779.59	207.46	-	779.59	572.13
12-74	779.59	207.46	-	3,710.29	3,502.83
1-75	779.59	207.46	-	779.59	572.13
Magnaleasing Overpayment 2-74 to 1-75 . . . . . (3,608 sq. ft. x .69 per sq. ft. ÷ 12 = 207.46 per mo.)					$9,796.26

Reference Exhibit 7 and 7A

Date	Billed By S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
2-75	779.59	240.53	-	779.59	539.06
3-75	779.59	240.53	-	779.59	539.06
4-75	779.59	240.53	-	779.59	539.06
5-75	779.59	240.53	-	779.59	539.06
6-75	779.59	240.53	-	779.59	539.06
7-75	779.59	240.53	-	779.59	539.06
8-75	779.59	240.53	-	779.59	539.06
9-75	779.59	240.53	-	779.59	539.06
10-75	779.59	240.53	-	779.59	539.06
11-75	779.59	240.53	-	779.59	539.06
12-75	779.59	240.53	-	779.59	539.06
1-76	779.59	240.53	-	779.59	539.06

Magnaleasing Overpayment 2-75 to 1-76 . . . . . .$6,468.72
(3,608 sq. ft. x .80 per sq. ft. ÷ 12 = 240.53 per mo.)

2-76	779.59	276.61	-	779.59	503.98
3-76	779.59	276.61	-	779.59	503.98
4-76	779.59	276.61	-	779.59	503.98
5-76	779.59	276.61	-	779.59	503.98
6-76	779.59	276.61	-	779.59	503.98

Magnaleasing Overpayment 2-76 to 6-76 . . . . . .$2,519.90
(3,608 sq. ft. x .92 per sq. ft. ÷ 12 = 276.61 per mo.)

7-76	779.59	-	-	779.59	$ 779.59

Reference Exhibit 7 and 7A

Interest on Common Area Overpayment Damages

Period 8-73 to 1-74 -

Period 2-74 to 1-75

Thru year $(9{,}796.26 \div 2 \times 6\% \times \frac{12}{12})$ = $293.89

2-75 to 6-76 $(9{,}796.26 \times 6\% \times \frac{16}{12})$ = 781.74

$1,075.63

Period 2-75 to 1-76

Thru year $(6{,}468.72 \div 2 \times 6\% \times \frac{12}{12})$ = $194.06

1-76 to 6-76 $(6{,}468.72 \times 6\% \times \frac{6}{12})$ = 194.06

$388.12

Period 2-76 to 6-76

Thru year $(2519.90 \div 2 \times 6\% \times \frac{4}{12})$ = $ 24.95

Period 7-76 $ -

Total Interest $1,488.70

Reference Exhibit 7 and 7A

Summary of Common Area Overpayment Damages

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	9,796.26
Period 2-75 to 1-76	6,468.72
Period 2-76 to 6-76	2,519.90
Period 7-76	779.50
	$19,564.38

Summary of Common Area Overpayment and Interest Damages

Total Overpayment Common Area Damages	$19,564.38
Total Interest Common Area Damages.	1,488.70
Total Common Area Damages. . .	$21,053.08

Reference Exhibit 8 and 8A (Revised - No. 2) -
Schedule of Tax Overpayments

PLAINTIFFS REVISED EXHIBITS 8 AND 8A

Schedule of Tax Overpayments
Staten Island Mall

Date	Billed By S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
8-73	563.99	300.67	-	563.99	263.32
9-73	735.61	300.67	-	735.61	434.94
10-73	735.61	300.67	-	735.61	434.94
11-73	735.61	300.67	-	735.61	434.94
12-73	735.61	300.67	735.61	-	-
1-74	735.61	300.67	735.61	-	-
2-74	735.61	300.67	735.61	-	-
3-74	735.61	300.67	735.61	-	-
4-74	735.61	300.67	735.61	-	-
5-74	794.35	300.67	731.61	62.74	62.74
6-74	794.35	300.67	731.61	62.74	62.74

Magnaleasing Tax Overpayment 8-73 to 6-74 . . . . . .1,693.62
(3,608 sq. ft. x $1.00 per sq. ft. ÷ 12 = 300.67)

E361

Reference Exhibit 8 and 8A

Date	Billed By S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
7-74	794.35	321.71	731.61	62.74	62.74
8-74	794.35	321.71	731.61	62.74	62.74
9-74	794.35	321.71	731.61	62.74	62.74
10-74	794.35	321.71	731.61	62.74	62.74
11-74	794.35	321.71	-	794.35	472.64
12-74	794.35	321.71	-	794.35	472.64
1-75	794.35	321.71	-	794.35	472.64
2-75	794.35	321.71	-	794.35	472.64
3-75	794.35	321.71	-	794.35	472.64
4-75	794.35	321.71	-	794.35	472.64
5-75	11,173.00*	321.71	-	11,173.00	10,851.29
6-75	1,825.83	321.71	-	1,825.83	1,504.12

Magnaleasing Tax Overpayment 7-74 to 6-75 . . . . . $15,442.21
(3,608 sq. ft. x $1.07 per sq. ft. ÷ 12 = 321.71)

* Includes: May taxes at $794.35 plus $4,125.92 Retroactive taxes 2-1-75 to 5-31-75 and $6,252.72 retroactive taxes 2-1-74 to 1-31-75

E362

Reference Exhibit 8 and 8A

Date	Billed By S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
7-75	1,825.83	357.79	-	1,825.83	1,468.04
8-75	1,825.83	357.79	-	1,825.83	1,468.04
9-75	1,825.83	357.79	-	1,825.83	1,468.04
10-75	1,825.83	357.79	-	1,825.83	1,468.04
11-75	1,825.83	357.79	-	1,825.83	1,468.04
12-75	1,825.83	357.79	-	1,825.83	1,468.04
1-76	1,825.83	357.79	-	1,825.83	1,468.04
2-76	1,825.83	357.79	-	1,825.83	1,468.04
3-76	1,825.83	357.79	-	1,825.83	1,468.04
4-76	1,825.83	357.79	-	1,825.83	1,468.04
5-76	1,825.83	357.79	-	1,825.83	1,468.04
6-76	1,825.83	357.79	-	1,825.83	1,468.04
7-76	1,825.83	-	-	1,825.83	1,825.83

Magnaleasing Tax Overpayment 7-75 to 7-76 . . . . . $19,442.31
(3,608 sq. ft. x $1.19 sq. ft. ÷ 12 = 357.79)

Reference Exhibit 8 and 8A

Schedule of Interest
On Tax Damages

Period 8-73 to 6-74

Accrued During Tax Year ($1,693.62 ÷ 2 x 6% x $\frac{10}{12}$)	=	$ 42.34
Accrued in Subsequent 24 months ($1,693.62 x 6% x $\frac{24}{12}$)	=	203.23
		$ 245.57

Period 7-74 to 6-75

Accrued During Tax Year ($16,085.63 ÷ 2 x 6%)	=	$ 463.27
Accrued in Subsequent 12 months ($16,085.63 x 6% x $\frac{12}{12}$)	=	965.14
		$1,389.80

Period 7-75 to 6-76

Accrued During Tax Year ($17,616.48 ÷ 2 x 6%)	=	$ 528.49

Period 7-76	0
Interest on Tax Damages	$2,163.86

Reference Exhibit 8 and 8A

Tax Damages Summary

Period 8-73 to 6-74	$ 1,693.62
Period 7-74 to 6-75	15,442.21
Period 7-75 to 7-76	19,442.31
Tax Damages.	$37,578.14
Interest on Tax Damages.	2,221.77
Total Damages With Respect to Taxes.	$38,799.91

E365

Reference Exhibit 9, Assignment

Pl to Ex 9
5/31/76

ASSIGNMENT

For good and valuable consideration of ($10.00) ten dollars paid the 22nd day of March, 1976 the Magnavox Company hereby assigns to Magnaleasing, Inc. all of its right, title and interest in all claims of any kind whatsoever arising from the negotiation with respect to the leasing of a store at the Staten Island Mall.

The Magnavox Company

By Samuel J. Rozal

Samuel J. Rozal
Vice President

Attest:

Reference Exhibit 11, Sublease Dated July 16, 1973, Between Magnaleasing, Inc. and Regal of Staten Island, Inc.

SUBLEASE

This Sublease, made and entered into as of the 16th day of July, 1973, by and between:

MAGNALEASING, INC., a Delaware Corporation, with offices at 1760 Magnavox Way, Fort Wayne, Indiana 46804, hereinafter referred to as "Magnaleasing",

and

REGAL OF STATEN ISLAND, INC., a New Jersey corporation, having its principal office at #5 Commerce Street, Newark, New Jersey, hereinafter referred to as the "Dealer".

E367

Reference Exhibit 11

WITNESSETH:

WHEREAS, Magnaleasing has entered into a Lease Agreement, dated May 4, 1973, ("Underlying Lease") with Staten Island Mall as Lessor ("Lessor"), providing fot the lease by Magnaleasing from the Lessor of the following described premises:

Space #201
Staten Island Mall
Staten Island, New York 10314

("Premises"), for a term of fifteen (15) years, for the purpose of retail sale of home entertainment products of The Magnavox Company, a Delaware corporation ("Magnavox"); and

WHEREAS, Dealer desires to sublease the Premises from Magnaleasing for the retail sale of Magnavox products, together with other related activities;

Pls. Ex 11

Reference Exhibit 11

NOW, THEREFORE, in consideration of payment of rents, and the performance of other covenants and obligations of Dealer hereunder, Magnaleasing does hereby sublease to Dealer and Dealer does hereby sublease from Magnaleasing the Premises on the following terms and conditions:

1. Term: This Sublease shall begin on the commencement date of the Underlying Lease and terminate on January 31, 19[illegible], unless earlier terminated as hereinafter provided. Notwithstanding the above, Dealer shall not be obligated to pay rent or additional charges until Magnaleasing has completed "Tenant's Work" as described in Paragraph 11 of this Sublease, and the Premises may properly be occupied by Dealer for the leasehold purposes. Upon termination, all rights and duties of the parties shall terminate, except those stated in Paragraph 4 (for the period prior to the termination date), Paragraph 12 and Paragraph 13.

2. Lease: Dealer understands and agrees that this Sublease is

subject to the Underlying Lease, and that if the term of the Underlying Lease is for any reason terminated or expires, then the term of this Sublease shall automatically terminate without creating any liability whatsoever on the part of Magnaleasing.

3. Compliance with Underlying Lease: The Underlying Lease is incorporated in this Sublease by attachment, as fully as if its terms and provisions were set forth in full herein, and Dealer hereby agrees to assume and be bound by the same responsibilities, rights and duties, including the payment directly to Lessor of rent, percentage rent, additional rent and all other charges payable to Lessor, as Magnaleasing has as Lessee under the Underlying Lease, except for the following provisions:

a. Dealer shall not have the right to self-insure any portion of insurance required to be carried under the Underlying Lease.

Reference Exhibit 11

4. Indemnity: Dealer agrees to indemnify, defend and hold Magnaleasing harmless from and against any and all liability, loss, claim or expense (including reasonable attorney's fees) whatsoever arising out of Dealer's failure to comply with the terms, conditions and obligations of the Underlying Lease. Dealer further agrees to at all times indemnify, defend and hold Magnaleasing harmless from and against any and all responsibility, obligation, liability, claim, loss or expense (including reasonable Attorney's fees) which Magnaleasing may incur by virtue of this Sublease or the Dealer's occupancy or use of the subleased Premises. Magnaleasing agrees to indemnify, defend and hold Dealer harmless from and against all loss, liability, claim or expense (including reasonable Attorney's fees) arising out of violations of the Underlying Lease by Magnaleasing.

5. Reports: Dealer agrees to make all payment of rent, additional

rent, percentage rent, and all other amounts due to the Lessor and under the Underlying Lease directly to Lessor, and to submit all reports and documents directly to Lessor in a timely manner as required in the Underlying Lease, and to provide a copy to Magnaleasing at the address specified above. In addition, Dealer shall provide Magnaleasing with a monthly Profit & Loss Statement by the 25th of each following month, and an annual Profit & Loss Statement no later than ninety (90) days after the end of each fiscal year, and monthly sales summaries as required.

6. Assignment: Dealer shall not assign this Sublease voluntarily or by operation of law, or sublet the Premises without the prior written consent of Magnaleasing, and Lessor where required by the Underlying Lease.

7. Rent: In addition to amounts payable directly to the Lessor under the Underlying Lease, and in consideration for arranging and assuming

Reference Exhibit 11

the liabilities of the Underlying Lease, Dealer agrees to pay Magnaleasing as rent for this Sublease the sum of $17,589.00, payable in equal monthly installments of $97.72, on the first day of each month during the term of this Sublease.

8. Dealer Agreements: The Dealer understands that the purpose of this Sublease is to provide a dealership for the sale of Magnavox electronic home entertainment products for resale to the public. Dealer agrees as a condition of this Sublease, to execute a Magnavox Franchised Dealer Agreement, Home Entertainment Center Sign Agreement, and other appropriate Agreements for establishing Dealer as a reseller of Magnavox electronic home entertainment products ("Dealer Agreements"). Dealer further agrees to comply with the terms of the Dealer Agreements at all times during the term of this Sublease. If Dealer violates the terms of the Dealer Agreements and

Reference Exhibit 11

Magnavox terminates the Dealer Agreements, or if Dealer terminates the Dealer Agreements, Magnavox may terminate this Sublease as of one hundred twenty (120) days after the effective date of termination of the Dealer Agreements, without any further liability on the part of Magnaleasing to Dealer.

9. Deposit: As security for the performance of Dealer's obligations under this Sublease and the Underlying Lease, including the payment of rent to Magnaleasing and Lessor, Dealer shall deposit with Magnaleasing the sum of Two Thousand, Five Hundred ($2,500.00) Dollars upon execution of this Sublease. Magnaleasing may apply this deposit in whole or in part to the curing of any default that may exist under this Sublease or the Underlying Lease, without prejudice to any other remedy or remedies which Magnaleasing may have, and upon the application of such monies Dealer shall pay to Magnaleasing upon demand the amount expended in curing such defaults, so that the Security

Reference Exhibit 11

Deposit shall always be equal to Two Thousand, Five Hundred ($2,500.00) Dollars. If Dealer faithfully performs all of the covenants and agreements in this Sublease and the Underlying Lease, Magnaleasing shall return the deposit or any remaining balance thereof to the Dealer, with interest, within thirty (30) days of the termination of this Sublease.

10. Relations with Lessor: Dealer agrees that should a dispute occur between Dealer and Lessor, it will notify Magnaleasing immediately in writing as to the facts of the dispute, and that it shall take no action which would jeopardize the position of The Magnavox Company or Magnaleasing.

11. Fixtures: Magnaleasing agrees to complete "Tenant's Work" in accordance with Exhibit "A" of the Underlying Lease, and to deliver the Premises to Dealer at the commencement of the Sublease substantially in accordance with the appropriate Magnavox Home Entertainment Center Mall fixturing plan.

Subject to the Underlying Lease, all improvements, additions and alterations to the Premises shall become the property of Magnaleasing upon completion.

12. Payment for fixtures: In consideration for the completion of fixtures, Dealer agrees to pay to Magnaleasing upon the commencement of payment of rent as stated in Paragraph 1, the sum of Five Thousand, Two Hundred Seventy eight ($5,278.00) Dollars (ten 10%) percent of the estimated fixturing costs which sum shall in no event exceed Five Thousand, Seven Hundred ($5,700) Dollars, less allowance to be recovered from Lessor); Dealer further agrees to pay the actual cost of fixturing the Premises including supervision and architectural costs, less any payment received from Lessor and less the payment made by Dealer on the execution of this Sublease, amortized over a ten (10) year period at an interest rate of seven and one-half (7-1/2%) percent, to be paid in advance

BEST COPY AVAILABLE

Reference Exhibit 11

on the first day of each month to Magnaleasing.* In the event it becomes necessary to replace any of the fixtures installed by Magnaleasing at any time during the term of this Sublease, or any extension thereof, Dealer shall replace such fixtures, or at its option, notify Magnaleasing who shall replace the fixtures; in the event fixtures are replaced by Magnaleasing, any costs incurred in such replacement shall be amortized over a ten (10) year period or the remaining term of this Sublease, whichever is less, at an interest rate of seven and one-half (7-1/2%) percent, to be paid in advance on the first day of each month by Dealer to Magnaleasing.*

13. Surrender: At the expiration of the term of this Sublease or the earlier termination thereof, Dealer shall surrender possession of the Premises to Magnaleasing in the same condition as at the commencement of the

BEST COPY AVAILABLE

term of this Sublease, normal wear and tear excepted. Dealer further agrees not to make any additions, alternations or improvements to the Premises without the prior written consent of Magnaleasing and Lessor. Subject to the provisions of the Underlying Lease, all improvements, additions and alterations to the Premises shall upon their completion become the property of Magnaleasing.

---

* In the event payment on account of the aforesaid fixturing of the premises, inclusive of principal and interest shall be in excess of the sum of Five Hundred ($500.00) Dollars per month (such payments to be made monthly), the parties agree that payments will be recalculated to be made payable over a period of fifteen (15) years and not ten (10) years, such that the payment for principal and interest on a monthly basis will be reduced accordingly; any and all credits recovered from the Lessor shall be applied in reduction of the principal amount due Magnaleasing from Dealer, but shall not reduce the amount of monthly payment due until the total obligation is repaid by Dealer. However, recalculation shall be made such that the interest charge will be reduced and a larger sum will be applied in reduction of the principal balance due Magnaleasing from Dealer. It is the intention of the parties that Dealer shall not be obligated to pay in excess of Five Hundred ($500.00) Dollars per month for principal and interest on account hereof.

Reference Exhibit 11

14. Access: Dealer agrees to permit Magnaleasing or its agents to inspect the Premises at reasonable times and to permit Magnaleasing to make such repairs, improvements, alterations or additions to the Premises as Magnaleasing may deem desirable for the preservation of the Premises, subject to the terms of the Underlying Lease. Magnaleasing agrees to proceed diligently with any such work and to do such work in such a manner as to cause minimal disruption to Dealer's use of the Premises.

15. Default by Dealer: If Dealer shall fail to pay rent or to perform any other term, condition or covenant of this Sublease or the Underlying Lease for more than ten (10) days after written notice from Magnaleasing or Lessor, or if Dealer, its agents or employees shall falsify any report due under this Sublease, the Dealer Agreements, or the Underlying Lease; or if Dealer shall vacate the Premises for a period of more than seventy-two (72) hours; or if

Dealer shall fail to open for business for ten (10) business days; in addition to any other remedy Magnaleasing shall have under this Sublease, or the Lessor shall have under the Underlying Lease, Magnaleasing may terminate this Sublease, unless such default is caused by strikes or labor disputes, acts of God, governmental restrictions, regulations or controls, hostile governmental actions, civil commotion, riot or insurrection or other unavoidable casualty, subject at all times to the terms of the Underlying Lease.

16. Default by Magnaleasing: If Magnaleasing shall default in the performance of any of its obligations under the terms of this Sublease, Dealer may, upon thirty (30) days written notice of default, terminate this Sublease without liability, unless Magnaleasing is proceeding diligently to remedy the default, and unless such default is caused by strikes or labor disputes, acts of God, governmental restrictions, regulations or controls,

hostile governmental actions, civil commotion, riot or insurrection or other unavoidable casualty, subject at all times to the terms of the Underlying Lease.

17. Forfeiture: If at any time during the term of this Sublease

a. Dealer shall become insolvent; or

b. Proceedings in bankruptcy or reorganization shall be filed by or against Dealer; or

c. A Receiver shall be appointed for Dealer, its assets, the Premises, or the business conducted on the Premises; or

d. Dealer shall make an assignment for the benefit of creditors; or

e. Judgment is rendered or execution levied against the Premises; or

f. This Sublease or Dealer's interest therein shall be assigned, pass, or devolve to any person by operation of law or bankruptcy, insolvency or reorganization or otherwise;

Magnaleasing may terminate this Sublease by notice to Dealer and recover any

damages and expenses, including attorney's fees, restoration charges, and brokerage fees.

18. Waiver of Rights: Any waiver of Magnaleasing's rights under this Sublease shall not operate as a waiver of subsequent breaches of this Sublease or Agreements. Magnaleasing shall have all available legal or equitable remedies and all remedies available to Lessor under the Underlying Lease, and the remedies mentioned herein shall not be exclusive.

19. Quiet Enjoyment: Magnaleasing covenants that Dealer, upon complying with the terms of this Sublease and the Underlying Lease, shall have quiet enjoyment of the Premises.

20. Notices: All notices shall be sent certified mail, postage paid and return receipt requested, to the parties at the addresses stated above.

Reference Exhibit 11

21. Dealer Option: Notwithstanding anything aforementioned, Dealer shall have the option, providing he is not in default of the Sublease agreement or the Underlying Lease, with sixty (60) days written notice to Magnaleasing to pay off the unamortized portion of the fixturing costs as described in Paragraph 5. Upon receipt of such payment by Magnaleasing, the Dealer's obligation to pay any further additional rent payments as required by Paragraph 7 shall cease, and any further repayment by Landlord of fixturing costs under the terms of the Underlying Lease shall accrue to the Dealer. If Dealer so elects to pay off the fixturing costs, in consideration for Magnaleasing's guarantee of Dealer's performance of the Underlying Lease, Dealer agrees to pay an annual lease guarantee charge of One Thousand, Ninety-seven ($1,097.00) Dollars to Magnaleasing, payable at the end of each year of the term of this Sublease. It is further understood that such payment shall be reduced by an amount equal to one-half of one percent of

Reference Exhibit 11

the Dealer net cost of all products purchased by the Dealer from The Magnavox Company for the purpose of resale in the Premises, and that if the purchase of sa products exceeds the sum of Two Hundred Nineteen Thousand, Five Hundred ($219,500.00) Dollars in any year, Dealer shall have no obligation to pay a lease guarantee charge for that year.

22. In the event of a default by Dealer of the provision of this Sublease Agreement, which default shall precipitate costs reasonably flowing from such default and assessed against Magnaleasing, whether for payment of rent pursuant to the Underlying Lease (which payments shall thereafter not be recoverable by Magnaleasing from others) or otherwise, BEL-MART STORES, a New Jersey Corporation, by its signature to this document, agrees to reimburse Magnaleasing the amount of such reasonable costs incurred by

Reference Exhibit 11

Magnaleasing, with the express understanding that Bel-Mart Stores' undertaking to make such reimbursement shall in no event exceed the sum of Fifteen Thousand ($15,000.00) Dollars; and it is understood and agreed by and between the parties hereto that the signature of Bel-Mart Stores to this agreement shall in no way be construed to obligate Bel-Mart Stores to or for the performance of any of the covenants of this Sublease or the Underlying Lease referred to herein, but is limited solely to or for the purpose of obligating Bel-Mart Stores for the payment of such reasonable costs as hereinabove immediately set out to Magnaleasing, up to the sum of Fifteen Thousand ($15,000.00) Dollars only, and the aforesaid undertaking shall in no way be deemed to operate to create any rights in favor of Lessor, party to the Underlying Lease, and against Bel-Mart Stores.

23. The parties hereto hereby incorporate by reference a certain letter from an agent of Lessor dated June 27, 1973, with respect to the provisions

Reference Exhibit 11

contained in the Underlying Lease set out as Paragraph 7 on page 5 of the Rider annexed to said Underlying Lease which modifies and adds to Section 8.2F and especially subparagraph (e), which abrogates the requirement therein contained that the Assignee shall have a net worth of Fifty Thousand ($50,000.00) Dollars etc., all as set out in said letter and conditioned upon the continuing affiliation of Morris Gliklich, all as is therein contained. Copy of said letter is annexed hereto as Exhibit #1.

IN WITNESS WHEREOF, the parties have caused these presents to be signed by their proper corporate officers and their corporate seals hereto affixed, the day and year first above written.

MAGNALEASING, INC.

Attest:

By: _____

_____ Secretary

REGAL OF STATEN ISLAND, INC.

By: _____

_____ Secretary

BEL MART STORES (as to C22 only)

By: _____

_____ Secretary

Reference Exhibit 11
EXHIBIT #1

Staten Island Mall

Feist & Feist
Managing Agents
58 Park Place, Newark, N. J. 07102
Telephone: 201-642-8500

June 27, 1973

The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

Attention: John F. Kelly
Corporate Director,
Real Estate

Re: Lease ("Lease") dated May 4, 1973 by and between Staten Island Mall, as Landlord and The Magnavox Company, as Tenant covering store #201 in Staten Island Mall, Staten Island, New York

Gentlemen:

In response to your request, we hereby approve a corporation controlled by Morris Gliklich as a sublessee ("Sublessee") of store #201 in the Staten Island Mall, Staten Island, New York provided that Tenant and the Sublessee shall fulfill Tenant's obligations under Section 8.2F of the Lease, and further provided that the Sublessee is under and remains under the control of Morris Gliklich. In order to insure enforcement of the latter condition, you shall agree in your sublease with the Sublessee, that in the event the Sublessee shall no longer be controlled by Morris Gliklich, said relinquishment of control shall be deemed an event of default.

In no event, however, is our consent to be deemed an admission that you are not in default in the performance of any of your obligations under the Lease or a waiver of any of our rights arising under the Lease.

Very truly yours,

BLACKFRIARS REALTY CORP.

By _____

Reference Exhibit 12, Affidavit of Phyllis Blank

11/4/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAGNALEASING, INC.,

Plaintiff, 74 Civ. 5593 (LFM)

-against- AFFIDAVIT

STATEN ISLAND MALL, BLACKFRIARS REALTY CORP., TOTTENHAM REALTY CORP.,

Defendants

STATE OF INDIANA
ss.:
COUNTY OF ALLEN

PHYLLIS BLANK, being duly sworn, deposes and says:

1. I have been employed by The Magnavox Company ("Magnavox") since June of 1973 as an accountant and financial analyst. I am familiar with the books and records of Magnaleasing, Inc. ("Magnaleasing").

2. Pursuant to the direction of the Honorable Martin D. Jacobs, United States Magistrate, as Special Master in the above-entitled action, I make the following statement with regard to the books and records of Magnaleasing.

3. I was asked to explain the entries on the books of Magnaleasing made in July of 1976, which changed the balance of the Intercompany Account R-TV (Radio and Television Division of Magnavox), Account No. 25-02-11 from a credit balance of $464,215 (Account Payable) in June, to a $23,186 debit balance (Account Receivable) in July.

4. On July 31, 1976, Journal Entry #7-3221T (Exhibit A) was made and posted to the books of Magnaleasing. This

journal entry was made to transfer fourth quarter 1975 and first half 1976 accrued reserve FIT (Federal Income Tax) Account No. 63-01-02 and 63-01-01, respectively, to the R-TV books.

5. Journal Entry #7-3221T debits Intercompany Account R-TV $482,000.00, and credits Reserve FIT for the current year, Account No. 63-01-01 for $410,000.00 and credits Reserve FIT, Account No. 63-01-02 for the past years for $72,000.00, for a total of $482,000.00. Thus, the Intercompany Account R-TV credit balance of $464,000.00 in June, would be converted to a debit balance of $17,785.00.

6. This entry is made periodically in order to transfer FIT reserves to the Magnavox Corporate accounts for the purposes of preparing the consolidated tax returns of Magnavox. This is required by North American Philips, because Magnavox is included on the consolidated income tax return of North American Philips.

7. In addition, in July of 1976, a debit of $5,401.00 was made to the Intercompany Account R-TV by Journal Entry #7-3210 (Exhibit B). This entry reflects a cash receipt by Magnavox for the account of Magnaleasing. This amount is then deposited in the Magnavox bank account. The cash account of Magnavox is debited, the Intercompany account - Magnaleasing, of Magnavox is credited. The Accounts Receivable of Magnaleasing is credited, and the Intercompany Account R-TV of Magnaleasing is debited.

Reference Exhibit 12

8. These two journal entries are combined to form a total debit balance in Magnaleasing's Intercompany Account R-TV of $23,186.00. This can be computed by netting the current month's debits of $482,000.00 and $5,401.00 against the prior month's balance of $464,215.00. This equals $23,186.00.

9. All activity between Magnaleasing and Magnavox's plant general ledgers, of which R-TV is one, is recorded via an Intercompany account.

Phyllis Blank

Phyllis Blank

Sworn to before me this

24th day of September, 1976.

Eileen Jane Roemthe
Notary

My commission expires 9-29-77

SPECIAL FOR STATE OF NEW YORK

STATE OF INDIANA, COUNTY OF ALLEN, ss:

I, ROBERT D. HANSON, Clerk of the County of Allen in the State of Indiana, and also Clerk of the Circuit Court, the same being a court of record in and of the aforesaid county, having by law a seal do hereby certify that Eileen Jane Roemthe, by whom the foregoing acknowledgment or proof was taken, and whose name is subscribed thereto, was at the time of taking the same a notary public residing in said county duly commissioned and sworn and authorized by the laws of said state to take the same, to take proof or acknowledgment of deed and other instruments in writing to be recorded in said state, and to administer oath of affirmation in said county; that I have compared the signature of such officer upon the original certificate with a specimen of his signature on file in my office as such Clerk and believe the signature to the foregoing certificate of proof or acknowledgment to be genuine and the notary seal of said officer to have been thereto affixed in accordance with the laws of the State of Indiana, which laws do not provide for or contemplate any special seal or impression thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, which is the seal of said court, this 24 day of Sept. 1976

E390

Reference Exhibit 12

Capitalizing

JOURNAL VOUCHER

NUMBER 7-3221 T

DATE 7-31-76

ACCOUNT NAME AND EXPLANATION	ACCOUNT NUMBER	CREDIT SUBSIDIARY	CREDIT SUBSIDIARY
Intrsc - RTV	25 02 11	482 000	
Accrued FIT - Current	63 01 01		410 000
" " - Prior Yr	63 01 02		72 000
Transfer 4th Qtr 1975 and 1st Qtr 1976 accrued FIT to Corporate Books. Ref 7-3217 T			
TOTALS ⇒		482 000	482 000

P. Schaefer

Mary Lindy

Magnetleasing

E391
Reference Exhibit 12

JOURNAL VOUCHER

NUMBER 7-3210

DATE 7-31-76

ACCOUNT NAME AND EXPLANATION	ACCOUNT NUMBER	DEBIT SUBSIDIARY	CREDIT SUBSIDIARY
Sales Company - CEE	23 02 11	5401	
Accounts Receivable	03 01 01		5401
Cashbook Activity for July			
	TOTALS	5401	5401

Cashiers

U 1135-1 REV. 2-62

Reference Exhibit 13,
"Common Area Comparative Schedule"

COMMON AREA COMPARATIVE SCHEDULE
(for fiscal years ending July 31)

ACTUAL BILLINGS (X $1,000)

Store	1973	1974	1975	1976
Willowbrook	$14.6	$16.3	$18.5	$18.4
Kings Plaza	6.8	7.1	7.7	7.0
Staten Island	-	-	18.0	18.0

RATE PER SQ. FT. PER YEAR

Store	Square Ft.	1973	1974	1975	1976
Willowbrook	14,173	$1.03	$1.15	$1.30	$1.29
Kings Plaza	11,133	.60	.63	.69	.70
Staten Island	6,990	(2.58)*	(2.58)*	2.58	2.58

PERCENTAGE INCREASE PER YEAR

Store	1973/1974	1974/1975	1975/1976	Total % Increase 1973/1976
Willowbrook	12%	13%	-1%	24%
Kings Plaza	5%	10%	1%	16%
Staten Island	0%	0%	0%	0%

*As per stipulated facts ¶53

Plfs. Ex. 13

Reference Exhibit 14,
"Percentage Leases on 'Leasable' Basis"

Plfs Ex. 14
11/4/76

PERCENTAGE LEASES ON
"LEASABLE" BASIS

Total Leases for Staten Island Mall	Leases on a Leasable Basis	Percentage on Leasable Basis
114	13	12%

DEFENDANTS' REFERENCE EXHIBITS

E394
Reference Exhibit A -
August 18, 1976 letter from
Edward F. Beane to Jeffrey Newman

DEFTS
EXHIBIT 19
ID 8/31/76 W.B.

LAW OFFICES
KEANE & BUTLER
14 ELM PLACE
RYE, NEW YORK 10580
914/967-3936

THOMAS A. BUTLER
THOMAS F. KEANE, JR.
EDWARD F. BEANE
RAYMOND FITZGERALD
JOHN J. GILL
LON S. BANNETT
GUY J. HAYWARD
ALISON E. CLAPP

200 PARK AVENUE
NEW YORK, N. Y. 10017
212/682-2247
TELEX 420863 KAB

August 18, 1976

Jeffrey Newman, Esq.
Marshall Bretter Greene Allison & Tucker
430 Park Avenue
New York, New York 10022

Re: Magnaleasing, Inc. v.
Staten Island Mall et al

Dear Jeff:

In response to your letter of July 29, 1976 to Thomas A. Butler, I hereby furnish you with the requested information with respect to the damages to be claimed by Magnaleasing, Inc.

Response to paragraph 1 of your letter:
Damages suffered by Magnaleasing for construction, improvements, additions and alterations are as follows:

1.	Architectural fees	$ 4,500
2.	Architectural disbursements	358
3.	Carpeting and Flooring	6,854
4.	Fabrication of Sign	1,875
5.	Installation of Interior Display Booths	4,066
6.	Interior Fixtures	21,843
7.	Additional Fixtures	1,417
8.	Construction	65,008
9,	Exterior Lights	75
10.	Chain Hang	75
11.	Grand Opening Ass'n & Fee	940
12.	Miscellaneous	70
		$107,073

During pre-trial discovery, you examined Messrs. Henry Grenesco and William Cline with respect to these matters and requested and were furnished with the documents relating thereto.

To compute Magnaleasing's pecuniary loss with respect to these costs, we subtracted 30 months depreciation from the total cost of construction. Magnaleasing, Inc. had been depreciating these assets over a 15-year period (180 months), depreciation having commenced on January 1, 1974. Thirty months elapsed through June 30, 1976 when the Court rescinded the lease. Upon rescission, the improvements to the store became valueless. Using this method, the amount Magnaleasing claims is $89,904 plus interest at the statutory rate of 6% per annum.

Moneys for the above items were paid by Magnaleasing by checks drawn on the account of Magnavox Company which were specially coded to signify that the payment was a Magnaleasing payment. The moneys so expended were charged as expenditures to the books and records of Magnaleasing, Inc. Magnaleasing maintained separate books and records throughout its existence on which income received by it and expenditures made by it were recorded. The improvements and additions were recorded as assets of Magnaleasing. Their cost was charged as an expenditure on Magnaleasing's books and records.

Magnaleasing received a tenant's allowance of $7,216. Neither Magnaleasing nor Magnavox received any other payment with respect to the above expenditures either directly or indirectly.

<u>Response to paragraph 2 of your letter</u>:
Magnaleasing will establish its claim for common area charges by computing the difference between the actual common area charges paid by Magnaleasing from August 1973 to June 30, 1976 and the amount it would have paid during the same period had Staten Island Mall's representation as to common area charges been true. If the Mall's representation as to common area charges had been true, Magnaleasing would have paid $.60 per square foot for the initial lease year, from August 1973 to January 31, 1974 which figure would have increased by the rate of inflation for subsequent lease years. We used an average rate of inflation of 10% for each subsequent lease year. For the period from August 1, 1973 to January 31, 1974, Magnaleasing should have paid $.60 per square foot; February 1, 1974 to January 1, 1975, $.66 per square foot ($.60 plus 10% of $.60); for the period from February 1, 1975 to

January 31, 1976, $.72 per square foot; and from February 1, 1976 to June 30, 1976, $.78 per square foot. Because the lease was rescinded on June 29, 1976, Magnaleasing, Inc. is entitled to a refund of all the common area charges it paid for July, 1976. Magnaleasing used 3,608 square feet as the total area of its store in computing common area charges overpayment.

Common area charges paid by Regal Magnavox directly to the Staten Island Mall were not included in the computation. On the basis of these computations, Magnaleasing is entitled to $18,121.06 plus interest at 6% per year for its overpayment of common area charges.

Moneys for the above items were paid by Magnaleasing by checks drawn on the account of Magnavox Company which were specially coded to signify that the payment was a Magnaleasing payment. The moneys so expended were charged as expenditures to the books and records of Magnaleasing, Inc. Magnaleasing maintained separate books and records throughout its existence on which income received by it and expenditures made by it were recorded. The common area charges paid to Staten Island Mall were charged as expenditures on Magnaleasing's books and records.

Neither Magnaleasing nor Magnavox received any reimbursement for common area charges. Regal paid the sum of $360.42 to Magnaleasing, Inc. which Regal designated as applying to such charges. At the time said sum was received, Regal was indebted to Magnaleasing for a sum in excess of this amount for other matters.

Response to paragraph 3 of your letter:
Magnaleasing will establish its claim for its overpayment of real estate taxes by computing the difference between the real estate taxes actually paid by Magnaleasing from August 1973 to June 30, 1976 and the amount it would have paid in the same period had Staten Island Mall's representations with respect to real estate taxes been true. The real estate taxes Magnaleasing would have paid if the representation were true was $1.00 per square foot for the initial tax year from August 1973 to June 30, 1974, in-

creased by an amount equal to the increase in the New York City tax rate for each subsequent tax year. The percentage increases in the tax rates, which were stipulated by us during the trial (Stipulated Facts, para.60) are as follows:

July 1, 1974 to June 30, 1975	-	6.8%
July 1, 1975 to June 30, 1976	-	11.3%

Thus, for the period from July 1, 1973 to June 30, 1974, Magnaleasing, Inc. should have paid real estate taxes of $1.00 per square foot; from July 1, 1974 to June 30, 1975, Magnaleasing should have paid real estate taxes of $1.07 per square foot ($1.00 per square foot plus 6.8% of $1.00 per square foot); from July 1, 1975 to June 20, 1976, Magnaleasing should have paid real estate taxes of $1.19 per square foot. Because the lease was rescinded on June 29, 1976, Magnaleasing, Inc. is entitled to a refund of all the real estate taxes it paid for July 1976. Magnaleasing used 3,608 square feet as the total area of its store in computing its overpayment. Real estate taxes paid by Regal Magnavox directly to the Staten Island Mall are not included in this computation. Pursuant to these computations, Magnaleasing, Inc. is entitled to $34,726.06 plus interest at 6% per annum as damages for its overpayment of real estate taxes.

Moneys for the above items were paid by Magnaleasing by checks drawn on the account of Magnavox Company which were specially coded to signify that the payment was a Magnaleasing payment. The moneys so expended were charged as expenditures to the books and records of Magnaleasing, Inc. Magnaleasing maintained separate books and records throughout its existence on which income received by it and expenditures made by it were recorded. The real estate taxes paid were charged as expenditures on Magnaleasing's books and records.

Neither Magnaleasing nor Magnavox received any moneys for real estate taxes from any source. Regal Magnavox paid to Magnaleasing the sum of $301.34 which it designated as applying to real estate taxes. At the time said sum was received, Regal was indebted to Magnaleasing for a sum in excess of this amount for other matters.

Jeffrey Newman, Esq. August 18, 1976

Response to paragraph 4 of your letter:
The sublease between Magnaleasing and Regal has not been amended either orally or in writing since the date of its execution. With respect to request paragraph 4 C, there is a single dealer agreement between Magnavox and Regal which was executed on or about June 3, 1969, four years prior to date on which the lease between Magnaleasing and Staten Island Mall was executed. It has no relevance to the issue to be tried before Magistrate Jacobs, "the amount of damages due to plaintiff" (Memorandum of Judge MacMahon, at 14). For that reason, we decline to furnish you with such agreement.

In respect to paragraph 4 D, in our telephone conversation yesterday afternoon, you indicated that the information sought was whether there were any improvements, additions or alterations made to the Staten Island Mall store other than those already listed in the response to paragraph 1. No such additional improvements, alterations or additions were made.

With respect to paragraph 4 E of the letter, Regal paid Magnaleasing the sum of $500 in advance for the first month of the operation of the sublease. Regal did not make any other payments. Its volume of annual retail sales never exceeded $545,455 and therefore, Regal never became obligated to pay 1.1% of any such excess.

With respect to paragraph 4 F, during our telephone conversation of yesterday afternoon, you indicated the question refers to paragraph "12" of the sublease. No payments were made to Magnaleasing by anyone pursuant to paragraph "12".

We do not agree to stipulate that Mr. John Kelly's lease comments (Defendant's Exhibit L for identification) are a trial exhibit. The trial transcript (pp. 201-202) indicates that your request that the comments be received as evidence was objected to by Mr. Butler and were not received in evidence by the Court.

Very truly yours,

Edward F. Beane

Edward F. Beane

/hw

E399
Reference Exhibit B -
Request for check, invoice and
Magnavox check for $3,970.81

THE Magnavox COMPANY
Fort Wayne, Indiana

M0055386
1-23
210

DATE
9 10 73

70040 5436201

AMOUNT
PAY **3,970.81*

TO THE ORDER OF

FEIST & FEIST
58 PARK PLACE
NEWARK, N.J. 07102

THE Magnavox COMPANY

H Nicholas

R Gorell

9/13

Morgan Guaranty Trust Company OF NEW YORK PARK AVENUE OFFICE

⑈00055386⑈ ⑆0210⑈0023⑆ 218 68 158⑈

E400
Reference Exhibit B

1380-1 REV 11-69

10640 2456201

THE MAGNAVOX COMPANY

PLEASE REFER TO THIS NUMBER → M 0055386

INVOICE NUMBER	MO. DAY	PLANT	INVOICE AMOUNT	DISCOUNT	INVOICE NUMBER	MO. DAY	PLANT	INVOICE AMOUNT	DISCOUNT
03096	8/31/3	Z	3,970.81						

LEASE PAYMENT STATEN ISLAND MALL STORE #201

309303

R-W-Z - The Magnavox Company, Fort Wayne, Indiana 46804
G - The Magnavox Company of Tennessee, Greeneville, Tenn.
J - The Magnavox Company of Tennessee, Jefferson City, Tenn.
A - The Magnavox Company of Tennessee, Andrews, N. C.
M - Magnavox Systems, Inc., Fort Wayne, Ind.
F - The Magnavox Company of Tennessee, Flora, Miss.
C - The Magnavox Company of Tennessee, Johnson City, Tenn.
U - The Magnavox Company, Urbana, Illinois
B - The Magnavox Company of Tennessee, Bryson City, N. C.

DE FTS

EXHIBIT 3
8/31/76 W.B.

REQUEST FOR CHECK

(MUST BE COMPLETED IN INK OR TYPEWRITTEN)

M 1655-1
REV. 8-72

DATE: August 31, 1973

ISSUE CHECK TO:
NAME: Feist & Feist

STREET ADDRESS: 58 Park Place

CITY AND STATE: Newark, New Jersey

ZIP CODE: 07102

EXPLANATION:
Staten Island Mall Store No. 201
Taxes 8/9/73-8/31/73 -- $ 563.99
Rental 8/9/73-8/31/73 -- $1,449.99
Rental 9/1/73-9/30/73 -- $1,956.83

MAIL TO: Above

HOLD CHECK FOR:

EXT. NO.

REQUESTED BY

APPROVED BY

ACCOUNT NO. M 40746 — $3,970.81

$

$

AMOUNT OF CHECK $3,970.81

PLANT CODE (CHECK ONE)

- R [X] FT. WAYNE CONSUMER PRODUCTS
- W [ ] FT. WAYNE G & I
- Z [ ] FT. WAYNE CORPORATE
- A [ ] ANDREWS
- C [ ] JOHNSON CITY
- J [ ] JEFF. CITY
- G [ ] GREENEVILLE
- H [ ] ARDEN
- I [ ] SELMER
- K [ ] BAKER FURN.
- L [ ] LENOIR
- T [ ] TORRANCE
- P [ ] GAC
- V [ ] MORRISTOWN IND. PARK
- S [ ] LASALLE BELGIUM
- M [ ] MX SYSTEMS
- N [ ] MX INT'L INC.
- [ ] _____

BELOW FOR ACCOUNTING USE ONLY

DUE DATE

REFERENCE NO.

ACCOUNTING APPROVAL

VENDOR NO.

E401
Reference Exhibit B

AREA CODE 201 643-8500

Feist & Feist

REAL ESTATE and INSURANCE

58 Park Place, Newark, N.J. 07102

MANAGING AGENTS

[illegible]

10 01 73
MO. DAY YR.

PROP. NO. 70040
TENANT NO. 5436201

MO. DAY YR.	[illegible]	CURRENT CHARGES	UNPAID BALANCE	AMOUNT DUE
	[illegible] 9/30/73		2,012.45	
	[illegible] OCT 1973	1,249.46 X		
	[illegible] OCT 1973	733.61 X	537.29 *	
	[illegible] OCT 1973	177.45 X		
	[illegible] OCT 1973	474.49		
	SUB TOTALS	3,635.01	2,012.45	
			PAY THIS AMOUNT ▷	3,551.96

Defendants' Exhibit C

E402
Reference Exhibit C -
Magnaleasing income and balance sheet statements

Magna Leasing Income Statement
1st Half - 1974

INCOME STATEMENT:	January Month	January To - Date	February Month	February To - Date	March Month	March To - Date	April Month	April To - Date	May Month	May To - Date	June Month	June To - Date
83-50-00 Recoupment of Costs:												
83-50-01 Desoto	$	$	($ 483)	($ 483)	($ 7,500)	($ 7,983)	($ 246)	($ 8,229)	($ 248)	($ 8,477)	($10,483)	($18,960
83-50-02 Staten Island			(2,317)	(2,317)	919	(1,398)	(317)	(1,715)	(319)	(2,034)	(320)	(2,354
83-50-03 Town East			(632)	(632)	(4,000)	(4,632)	(787)	(5,419)	(827)	(6,246)	400	(5,846
83-50-04 Laurel Mall			(907)	(907)	(2,720)	(3,627)	(302)	(3,929)	(989)	(4,918)	378	(4,540
Sub Total	$	$	($ 4,339)	($ 4,339)	($13,301)	($17,640)	($ 1,652)	($19,292)	($ 2,383)	($21,675)	($10,025)	($31,700
83-60-00 Interest Income:												
83-60-01 Desoto	$	$	($ 1,203)	($ 1,203)	$ --	($ 1,203)	($ 607)	($ 1,810)	($ 605)	($ 2,415)	($ 603)	($ 3,018
83-60-02 Staten Island			--	--	(919)	(919)	(183)	(1,102)	(181)	(1,283)	(180)	(1,463
83-60-03 Town East			(1,222)	(1,222)	--	(1,222)	(402)	(1,624)	(401)	(2,025)	(400)	(2,425
83-60-04 Laurel Mall			(1,161)	(1,161)	--	(1,161)	(383)	(1,544)	(381)	(1,925)	(379)	(2,304
Sub Total	$	$	($ 3,586)	($ 3,586)	($ 919)	($ 4,505)	($ 1,575)	($ 6,080)	($ 1,568)	($ 7,648)	($ 1,562)	($ 9,210
83-70-00 Depr. Expense:												
83-70-01 Desoto	$	$	$ 483	$ 483	$ 1,121	$ 1,604	$ 516	$ 2,120	$ 517	$ 2,637	$ 517	$ 3,154
83-70-02 Staten Island			2,317	2,317	(1,197)	1,120	560	1,680	563	2,243	563	2,806
83-70-03 Town East			632	632	465	1,097	391	1,488	389	1,877	389	2,266
83-70-04 Laurel Mall			907	907	1,508	2,415	482	2,897	482	3,379	482	3,861
Sub Total	$	$	$ 4,339	$ 4,339	$ 1,897	$ 6,236	$ 1,949	$ 8,185	$ 1,951	$10,136	$ 1,951	$12,087
83-80-00 Other Exp. - Showcases:												
83-80-01 Desoto	$	$	$10,207	$10,207	$ --	$10,207	$ --	$10,207	$ --	$10,207	$ --	$10,207
83-80-02 Staten Island			15,518	15,518	--	15,518	--	15,518	--	15,518	--	15,518
83-80-03 Town East			--	--	--	--	--	--	--	--	--	--
83-80-04 Laurel Mall			--	--	--	--	--	--	--	--	--	--
Sub Total			$25,725	$25,725	$ --	$25,725	$ --	$25,725	$ --	$25,725	$ --	$25,725
83-99-01 Other Exp. - Regular	$ 40	$ 40	$ 624	$ 664	$ 4,886	$ 5,550	($ 1,479)	$ 4,071	($ 742)	$ 3,329	($ 500)	$ 2,829
*Sub Total (Profit) Before Tax	$ 40	$ 40	$22,763	$22,803	($ 7,437)	$15,366	($ 2,757)	$12,609	($ 2,742)	$ 9,867	($10,136)	($ [illegible]
89-01-01 F.I.T. Provision	$ --	$ --	($11,000)	($11,000)	$ 4,000	($ 7,000)	$ 1,000	($ 6,000)	$ 1,000	($ 5,000)	$ 5,000	$ --
(Profit)/Loss	$ 40	$ 40	$11,763	$11,803	($ 3,437)	$ 8,366	($ 1,757)	$ 6,609	($ 1,742)	$ 4,867	($ 5,136)	($ 269

Responsibility: P. Blank

* Input for Monthly Grey Book

Group I
SEC. K (Pa

E403
Reference Exhibit C

Magna Leasing Balance Sheet
1st Half of 1974

BALANCE SHEET:	January Month	January To - Date	February Month	February To - Date	March Month	March To - Date	April Month	April To - Date	May Month	May To - Date	June Month	June To - Date
03-01-01 Accounts Rec.	$ --	$ --	$	$ 7,225	($ 3,798)	$ 3,427	$ 3,227	$ 6,654	$ 2,652	$ 9,306	$ 55	$ 9,361
25-02-10 Intercompany	(286,205)	(286,205)		(285,118)	(34,126)	(319,244)	1,479	(317,765)	(1,357)	(319,122)	3,971	(315,151
29-70-00 Leasehold Imp.:												
29-70-01 DeSoto	--	--		72,114	20,373	92,487	157	92,644	--	92,644	--	92,644
29-70-02 Staten Island	--	--		100,728	--	100,728	534	101,262	--	101,262	--	101,262
29-70-03 Town East	--	--		66,336	4,000	70,336	(383)	69,953	--	69,953	--	69,953
29-70-04 Laurel Mall	--	--		52,713	4,895	57,608	--	57,608	--	57,608	3,635	61,243
Sub Total	$ --	$ --	$	$291,891	$ 29,268	$321,159	$ 308	$321,467	$ --	$321,467	$ 3,635	$325,102
37-01-01 Assets-In-Process	$316,839	$316,839	$	($ 22,683)	$ 20,235	($ 2,448)	$ 1,892	($ 556)	$ 3,635	$ 3,079	$ 4,701	$ 7,780
39-70-00 Reserve For Depr.:												
39-70-01 Desoto	$ --	$ --	$	($ 483)	($ 1,121)	($ 1,604)	($ 516)	($ 2,120)	($ 517)	($ 2,637)	($ 517)	($ 3,154)
39-70-02 Staten Island	--	--		(2,317)	1,197	(1,120)	(560)	(1,680)	(563)	(2,243)	(563)	(2,806)
39-70-03 Town East	--	--		(632)	(465)	(1,097)	(391)	(1,488)	(389)	(1,877)	(389)	(2,266)
39-70-04 Laurel Mall	--	--		(907)	(1,508)	(2,415)	(482)	(2,897)	(482)	(3,379)	(482)	(3,861)
Sub Total	$ --	$ --	$	($ 4,339)	($ 1,897)	($ 6,236)	($ 1,949)	($ 8,185)	($ 1,951)	($ 10,136)	($ 1,951)	($ 12,087)
47-01-07 Prepaid Expense	$ --	$ 1	$	$ 1	$ --	$ 1	$ --	$ 1	$ --	$ 1	$ --	$ 1
52-01-02 A/P (Unpaid)	($ 20,675)	($ 20,675)		($ 1,805)	$ 1,805	$ --	$ --	$ --	$ --	$ --	$ --	$ --
53-30-01 A/P (Sec. Deposit)	($ 9,000)	($ 9,000)		($ 6,975)	($ 4,050)	($ 11,025)	($ 2,200)	($ 13,225)	$ --	($ 13,225)	$ --	($ 13,225)
59-50-01 Reserve for Contingencies	$ --	$ --		$ --	$ --	$ --	$ --	$ --	($ 237)	($ 237)	($ 275)	($ 512)
63-01-01 Reserve for F.I.T.	$ --	$ --		$ 11,000	($ 4,000)	$ 7,000	($ 1,000)	$ 6,000	($ 1,000)	$ 5,000	($ 5,000)	$ --
66-01-01 Common Stock	$ --	($ 1,000)		($ 1,000)	$ --	($ 1,000)	$ --	($ 1,000)	$ --	($ 1,000)	$ --	($ 1,000)
Profit (Loss)		(40)		($ 11,803)	$ 3,437	($ 8,366)	$ 1,757	($ 6,609)	$ 1,742	($ 4,867)	$ 5,136	$ 269

Group II
SEC. K (Pg. 8)

Responsibility: P. Blank

E404 Reference Exhibit C

Magna Leasing Income Statement
2nd Half - 1974

INCOME STATEMENT:	July Month	July To Date	August Month	August To Date	September Month	September To Date	October Month	October To Date	November Month	November To Date	December Month	December To Date
83-50-00 Recoupment of Costs:												
83-50-01 DeSoto	($ 252)	($19,212)	($ 223)	($19,435)	$18,758	($ 677)	($ 232)	($ 909)	($ 458)	($ 1,367)	(365)	(1732)
83-50-02 Staten Island	(323)	(2,677)	(325)	(3,002)	(327)	(3,329)	(329)	(3,658)	(331)	(3,989)	(333)	(4322)
83-50-03 Town East	(216)	(6,062)	(217)	(6,279)	3,781	(2,498)	(220)	(2,718)	(214)	(2,922)	(215)	(2137)
83-50-04 Laurel Mall	(329)	(4,869)	(332)	(5,201)	2,386	(2,815)	(336)	(3,151)	(393)	(3,544)	1976	(1568)
Sub Total	(1,120)	(32,820)	(1,097)	(33,917)	24,598	(9,319)	(1,117)	(10,436)	(1,396)	(11,832)	1063	(1070)
83-60-00 Interest Income:												
83-60-01 DeSoto	(601)	(3,619)	(527)	(4,146)	3,171	(975)	(368)	(1,343)	(892)	(2,235)	(235)	(2470)
83-60-02 Staten Island	(177)	(1,640)	(175)	(1,815)	(173)	(1,988)	(171)	(2,159)	(169)	(2,328)	(167)	(2495)
83-60-03 Town East	(398)	(2,823)	(397)	(3,220)	(395)	(3,615)	(394)	(4,009)	(380)	(4,389)	(379)	(4768)
83-60-04 Laurel Mall	(403)	(2,707)	(400)	(3,107)	(398)	(3,505)	(396)	(3,901)	(339)	(4,240)	2367	(1873)
Sub Total	(1,579)	(10,789)	(1,499)	(12,288)	2,205	(10,083)	(1,329)	(11,412)	(1,780)	(13,192)	1586	(11606)
83-70-00 Depr. Expense:												
83-70-01 DeSoto	517	3,671	517	4,188	517	4,705	400	5,105	400	5,505	400	5905
83-70-02 Staten Island	563	3,369	563	3,932	563	4,495	530	5,025	530	5,555	550	6105
83-70-03 Town East	389	2,655	389	3,044	389	3,433	366	3,799	366	4,165	366	4531
83-70-04 Laurel Mall	516	4,377	516	4,893	516	5,409	335	5,744	335	6,079	335	6414
Sub Total	1,985	14,072	1,985	16,057	1,985	18,042	1,631	19,673	1,631	21,304	1631	22935
83-80-00 Other Exp. - Showcases:												
83-80-01 DeSoto	--	10,207	--	10,207	--	10,207	--	10,207	--	10,207	—	10207
83-80-02 Staten Island	--	15,518	--	15,518	--	15,518	--	15,518	--	15,518	—	15518
83-80-03 Town East	--	--	--	--	--	--	--	--	--	--	—	—
83-80-04 Laurel Mall	--	--	--	--	--	--	--	--	--	--	—	—
Sub Total	--	25,725	--	25,725	--	25,725	--	25,725	--	25,725	—	25725
83-99-01 Other Exp. - Regular	(1,000)	1,829	980	2,809	25,000	27,809	25,000	52,809	25,000	77,809	25000	102809
*Sub Total (Profit) Before Tax	(1,714)	(1,983)	369	(1,614)	53,788	52,174	24,185	76,359	23,455	99,814	27280	127094
89-01-01 F.I.T. Provision	1,000	1,000	--	1,000	(26,000)	(25,000)	(12,000)	(37,000)	(11,000)	(48,000)	(14,000)	(62000)
(Profit)/Loss Balancing To Ledger	($ 714)	($ 983)	$ 369	($ 614)	$27,788	$27,174	$12,185	$39,359	$12,455	$51,814	13280	67094

*Input For Monthly Gray Book

Responsibility: P. Blank

E405
Reference Exhibit C

Magna-Leasing Balance Sheet
2nd Half Of 1974

	July Month	July To Date	August Month	August To Date	September Month	September To Date	October Month	October To Date	November Month	November To Date	December Month	December To Date
BALANCE SHEET:												
03-01-01 Accounts Receivable	$2,085	$ 11,446	$ 1,367	$ 12,813	$23,204	$ 36,017	$ 2,446	$ 38,463	($14,263)	$ 24,200	(617)	2152
25-02-10 Intercompany	1,614	(313,537)	249	(313,288)	1,214	(312,074)	2,250	(309,824)	19,439	(290,385)	[illegible]	[illegible]
29-70-00 Leasehold Imp.:												
29-70-01 DeSoto Florida	--	92,644	--	92,644	--	92,644	--	92,644	--	92,644	—	92,644
29-70-02 Staten Island Long Island N.Y.	--	101,262	--	101,262	--	101,262	--	101,262	--	101,262	—	101,262
29-70-03 Town East, Texas	--	69,953	--	69,953	--	69,953	--	69,953	--	69,953	—	69,953
29-70-04 Laurel Mall, Pa	--	61,243	--	61,243	--	61,243	--	61,243	--	61,243	—	61,243
	--	325,102	--	325,102	--	325,102	--	325,102	--	325,102	--	325,102
Contra:												
29-70-11 DeSoto	--	--	--	--	(20,013)	(20,013)	--	(20,013)	--	(20,013)	1193	(19,770)
29-70-12 Staten Island	--	--	--	--	(5,700)	(5,700)	--	(5,700)	--	(5,700)	—	[illegible]
29-70-13 Town East	--	--	--	--	(4,000)	(4,000)	--	(4,000)	(2,000)	(6,000)	--	[illegible]
29-70-14 Laurel Mall	--	--	--	--	(19,545)	(19,545)	--	(19,545)	--	(19,545)	[illegible]	[illegible]
	--	--	--	--	(49,258)	(49,258)	--	(49,258)	(2,000)	(51,258)		[illegible]
Sub Total Leasehold Imp.	--	325,102	--	325,102	(49,258)	275,844 ✓	--	275,844	(2,000)	273,844	(1137)	27270
37-01-01 Assets In Process	--	7,780	--	7,780	--	7,780 ✓	--	7,780	--	7,780	—	[illegible]
39-70-00 Reserve For Depreciation:												
39-70-01 DeSoto	(517)	(3,671)	(517)	(4,188)	(517)	(4,705)	(400)	(5,105)	(400)	(5,505)	[illegible]	[illegible]
39-70-02 Staten Island	(563)	(3,369)	(563)	(3,932)	(563)	(4,495)	(530)	(5,025)	(530)	(5,555)	[illegible]	[illegible]
39-70-03 Town East	(389)	(2,655)	(389)	(3,044)	(389)	(3,433)	(366)	(3,799)	(366)	(4,165)	[illegible]	[illegible]
39-70-04 Laurel Mall	(516)	(4,377)	(516)	(4,893)	(516)	(5,409)	(335)	(5,744)	(335)	(6,079)	[illegible]	[illegible]
Sub Total Res. For Depreciation	(1,985)	(14,072)	(1,985)	(16,057)	(1,985)	(18,042) ✓	(1,631)	(19,673)	(1,631)	(21,304)	[illegible]	[illegible]
47-01-07 Prepaid Expense	--	1	--	1	--	1	--	1	--	1	—	1
52-01-02 A/P (Unpaid)	--	--	--	--	--	--	--	--	--	--	—	—
53-30-01 A/P (Sec. Deposit)	--	(13,225)	--	(13,225)	--	(13,225)	(2,250)	(15,475)	--	(15,475)	—	(15475
59-50-01 Reserve For Contingencies	--	(512)	--	(512)	(26,963)	(27,475)	(25,000)	(52,475)	(25,000)	(77,475)	[illegible]	[illegible]
63-01-01 Reserve For F.I.T.	(1,000)	(1,000)	--	(1,000)	26,000	25,000	12,000	37,000	11,000	48,000	14000	[illegible]
66-01-01 Common Stock	--	(1,000)	--	(1,000)	--	(1,000)	--	(1,000)	--	(1,000)	—	[illegible]
PROFIT (LOSS) Balancing	$ 714	$ 983	($ 369)	$ 614	($27,788)	($ 27,174)	($ 12,185)	($ 39,359)	($12,455)	($ 51,814)	(15280)	[illegible]

Responsibility: P. A. Blank

Group II
Sec. K (Pg. 2)

Management Income Statement
1995

	January		February		March		April		May		June	
	Month	To Date	Month	To Date	Month	To Date	Month	To Date	Month	To Date	Month	To Date
83-50-00 Recreational Facilities												
-01 DeSoto	(237)	(237)	(239)	(475)	—	(475)	(482)	(957)	(244)	(1200)	(245)	(1447)
-02 Stolen Island	(334)	(334)	(337)	(671)	—	(671)	(680)	(1351)	(343)	(1694)	(345)	(2039)
-03 Tower Point	(217)	(217)	(218)	(476)	—	(476)	(450)	(925)	(232)	(1157)	(233)	(1390)
-04 Laurel Hall	-0-	-0-	—	—	—	—	—	—	—	—	—	—
Sub Total	(788)	(788)	(794)	(1582)	—	(1582)	(1612)	(3194)	(819)	(4013)	(823)	(4836)
83-60-00 Interest Income												
-01 DeSoto	(363)	(363)	(362)	(725)	—	(725)	(718)	(1443)	(356)	(1799)	(355)	(2154)
-02 Stolen Island	(165)	(165)	(163)	(328)	—	(328)	(320)	(648)	(157)	(805)	(155)	(1611)
-03 Tower Point	(378)	(378)	(376)	(754)	—	(754)	(764)	(1518)	(388)	(1906)	(387)	(2293)
-04 Laurel Hall	(594)	(594)	(593)	(1187)	—	(1187)	(1187)	(2374)	(593)	(2967)	(593)	(3560)
Sub Total	(1500)	(1500)	(1494)	(2994)	—	(2994)	(2989)	(5983)	(1494)	(7477)	(1490)	(8967)
83-70-00 Operating Income												
-01 DeSoto	406	406	406	812	406	1218	406	1624	406	2030	406	2436
-02 Stolen Island	530	530	530	1060	567	1627	567	2194	567	2761	563	3324
-03 Tower Point	354	354	354	708	371	1079	371	1450	371	1821	371	2192
-04 Laurel Hall	309	309	309	618	309	927	303	1230	303	1533	303	1836
Sub Total	1599	1599	1599	3198	1653	4851	1647	6498	1647	8145	1603	9748
83-80-00 Gain/Loss Investments												
-01 DeSoto	-0-	-0-	—	—	—	—	—	—	—	—	2040	2040
-02 Stolen Island	-0-	-0-	4861	4861	4877	9738	9201	18939	(594)	18345	13500	31845
-03 Tower Point	-0-	-0-	—	—	—	—	—	—	—	—	—	—
-04 Laurel Hall	-0-	-0-	—	—	—	—	—	—	—	—	—	—
Sub Total	-0-	-0-	4861	4861	4877	9738	9201	18939	(594)	18345	17540	35885
83-99-01 Sub Ledger Reports	-0-	-0-	—	—	—	—	—	—	—	—	—	—
Sub Total Before Income Tax											16830	31830
89-01-01 FIT Provision	-0-	-0-	(1000)	(2000)	[illegible]	(3000)	(2000)	(5000)	1000	(4000)	(8000)	(15000)
(Profit)/Loss	(689)	(689)	[illegible]	1683	2520	5013	3247	8260	(2260)	8000	8830	16830

E406
Reference Exhibit C

BEST COPY AVAILABLE

Wayne Home
Balance Sheet
1975

	January 1975		February		March		April		May		June	
	Month	To Date	Month	To Date	Month	To Date	Month	To Date	Month	To Date	Month	To Date
03-01-01 Accounts Receivable	923	22446	1418	23864	(1425)	22439	1235	31674	5881	37555	1456	39011
25-00-10 Intercompany	2114	(287106)	57734	(229372)	(27503)	(256875)	(221)	(257096)	5028	(252068)	(16683)	(268751)
29-70-00 Land & Lot Improvements												
-01 Dodds	-0-	92644	-0-	92644	-0-	92644	—	92644	—	92644	—	92644
-02 Stoke Island	-0-	101262	-0-	101262	5811	107073	—	107073	—	107073	—	107073
-03 Town East	-0-	69953	-0-	69953	2525	72478	—	72478	—	72478	—	72478
-04 Laurel Hall	-0-	61243	(556)	60687	-0-	60687	—	60687	—	60687	—	60687
Sub Total	-0-	325102	(556)	324546	8336	332882		332882	—	332882	—	332882
Extra												
29-70-11 Dodds	-0-	(18870)	-0-	(18870)	-0-	(18870)	—	(18870)	—	(18870)	—	(18870)
-12 Stoke Island	-0-	(5700)	-0-	(5700)	-0-	(5700)	—	(5700)	(7252)	(12952)	—	(12952)
-13 Town East	-0-	(6000)	-0-	(6000)	-0-	(6000)	—	(6000)	—	(6000)	—	(6000)
-14 Laurel Hall	-0-	(21825)	-0-	(21825)	-0-	(21825)	—	(21825)		(21825)	—	(21825)
Sub Total	-0-	(52395)	-0-	(52395)	-0-	(52395)	—	(52395)	(7252)	(52395)	—	(52395)
Sub Total Land & Improv.	-0-	272707	(556)	272151	8336	280487	—	280487	(7252)	273235	—	273235
37-01-01 Assets Held for Sale	-0-	7780	556	8336	(8336)	-0-	—	—	—	—	—	—
39-70-00 Reserve for Depreciation												
-01 Dodds	(406)	(6311)	(406)	(6717)	(406)	(7123)	(406)	(7529)	(406)	(7935)	(406)	(8341)
-02 Stoke Island	(530)	(6615)	(530)	(7145)	(567)	(7712)	(567)	(8279)	(567)	(8846)	(523)	(9369)
-03 Town East	(354)	(9885)	(354)	(5239)	(371)	(5610)	(371)	(5981)	(371)	(6352)	(371)	(6723)
-04 Laurel Hall	(309)	(6723)	(309)	(7032)	(309)	(7341)	(303)	(7644)	(303)	(7947)	(303)	(8250)
Sub Total Depreciation	(1599)	(29534)	(1599)	(26133)	(1653)	(27786)	(1647)	(29433)	(1647)	(31080)	(1603)	(32683)
42-01-07 Organization Exp.	-0-	1	-0-	1	-0-	1	—	1	—	1	—	1
52-01-00 N/P (Legal)	-0-	-0-	-0-	-0-	-0-	-0-	—	—	—	—	—	—
55-30-01 N/P Security Dep't	-0-	(15475)	-0-	(15475)	-0-	(15475)	—	(15475)	—	(15475)	—	(15475)
59-50-01 Prepaid Interest	(749)	(103224)	275	(102949)	24051	(78898)	(13614)	(92512)	(750)	(93262)	—	(93262)
63-01-01 Reserve for FIT (Annual)	(62000)	-0-										
63-01-02 (Prior)	62000	62000	(60000)	2000	3000	5000	3000	8000	(1000)	7000	8000	15000
66-01-01 Common Stock	-0-	(1000)	-0-	(1000)	-0-	(1000)	—	(1000)	—	(1000)	—	(1000)
68-07-01 Retained Earnings		67094	-0-	67094	-0-	67094	—	67094	—	67094	—	67094
Profit (Loss)	689	689	(2172)	(1483)	(5347)	(6830)	(5247)	(8260)	260	(8000)	(8830)	(16830)

E407
Reference Exhibit C

E408
Reference Exhibit C

INCOME STATEMENT
2nd Half 1975

	JULY 1975		AUGUST 1975		SEPTEMBER 1975		OCTOBER 1975		NOVEMBER		DECEMBER	
	MONTH	TO DATE	MONTH	TO DATE	MONTH	TO DATE	MONTH	TO DATE	MONTH	TO DATE	MONTH	TO DATE
83-50-00 REIMBURSEMENT OF COSTS												
-01 DESOTO	(247)	(1694)	(247)	(1993)	(251)	(2194)	(252)	(2446)	(254)	(2700)	(256)	(2956)
-02 STATEN ISLAND	(348)	(2387)	(350)	(2737)	(352)	(3089)	(354)	(3443)	(356)	(3799)	(359)	(4158)
-03 TOWN EAST	(235)	(1585)	(236)	(1821)	(238)	(2059)	(239)	(2298)	(241)	(2539)	(242)	(2781)
-04 LAUREL MALL	-0-	-0-	-0-	-0-			(230)	(230)	(300)	(530)	(751)	(1281)
SUB TOTAL	(830)	(5666)	(833)	(6501)	(841)	(7342)	(1075)	(8417)	(1151)	(9568)	(1608)	(11176)
83-60-00 INTEREST INCOME												
-01 DESOTO	(353)	(2507)	(351)	(2858)	(349)	(3207)	(348)	(3555)	(346)	(3901)	(344)	(4245)
-02 STATEN ISLAND	(152)	(1112)	(150)	(1262)	(148)	(1410)	(146)	(1556)	(144)	(1700)	(141)	(1841)
-03 TOWN EAST	(385)	(2678)	(384)	(3062)	(382)	(3444)	(381)	(3825)	(379)	(4204)	(378)	(4582)
-04 LAUREL MALL	(593)	(4153)	(594)	(4747)	(593)	(5340)	(364)	(5704)	(293)	(5997)	(158)	(5839)
SUB TOTAL	(1483)	(10450)	(1479)	(11929)	(1472)	(13401)	(1239)	(14640)	(1162)	(15802)	(905)	(16507)
83-70-00 DEPRECIATION EXPENSE												
-01 DESOTO	406	2842	406	3248	406	3654	406	4060	406	4466	406	4872
-02 STATEN ISLAND	523	3807	523	4330	523	4853	523	5376	523	5899	523	6422
-03 TOWN EAST	371	2563	371	2934	371	3305	371	3676	371	4047	371	4418
-04 LAUREL MALL	303	2139	303	2442	303	2745	303	3048	303	3351	303	3654
SUB TOTAL	1603	11351	1603	12954	1603	14557	1603	16160	1603	17763	1603	19366
83-80-00 OTHER EXP-SHOWCASE												
-01 DESOTO	-0-	2040	3849	5889	2074	7963	4215	12178	-0-	12178	2141	14319
-02 STATEN ISLAND	(2897)	31248	11774	43022	6142	49164	10754	59918	—	59918	5632	65550
-03 TOWN EAST	-0-	-0-	-0-	-0-								
-04 LAUREL MALL	-0-	-0-	-0-	-0-								
SUB TOTAL	(2897)	33288	15623	48911	8216	57127	14969	72096	—	72096	7773	79869
83-84-00 OTHER EXP-SPACE	-0-	-0-	2683	2683	(1908)	775	1231	2006	—	2006	2327	4333
83-90-01 OTHER EXPENSE	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	125000	125000	—	125000
SUB TOTAL (PROFIT) BEFORE TAX * FED. STATE - DEFERRED FIT	(3307)	28523	17595	46118	5598	51716	15489	67205	124290	191495	9890	201385
87-01-01 FIT PROVISION	1000	(14000)	(5000)	(20000)	(5000)	(25000)	(7000)	(32000)	(60000)	(92000)	(5000)	(97000)
(PROFIT)/LOSS	(2307)	14523	9595	24118	2598	26716	8489	35205	64290	99495	4890	104385

Reference Exhibit C

E409

BALANCE SHEET
1975

	JULY 1975		AUGUST 1975		SEPTEMBER 1975		OCTOBER		NOVEMBER		DECEMBER	
	MONTH	TO DATE	MONTH	TO DATE	MONTH	TO DATE	MONTH	TO DATE	MONTH	TO DATE	MONTH	TO DATE
03-01-01 ACCOUNTS RECEIVABLE	4450	43461	4521	47982	5706	53688	(2981)	50707	4254	54961	(2331)	52630
25-00-10 ZAYRE COMPANY	1210	(267841)	(600513)	(288054)	(9701)	(297755)	(10905)	(308660)	(1631)	(310291)	19034	(291257)
32-70-00 LEASEHOLD IMPROVEMENTS												
-01 DESOTO	-0-	92644	-0-	92644	-0-	92644	-0-	92644	-0-	92644	-0-	92644
-02 STATEN ISLAND	-0-	107073	-0-	107073	-0-	107073	-0-	107073	-0-	107073	-0-	107073
-03 TOWN EAST	-0-	72478	-0-	72478	-0-	72478	-0-	72478	-0-	72478	-0-	72478
-04 LAUREL MALL	-0-	60687	-0-	60687	-0-	60687	-0-	60687	-0-	60687	-0-	60687
CONTRA												
09-70-11 DESOTO	-0-	(18870)	-0-	(18870)	-0-	(18870)	-0-	(18870)	-0-	(18870)	-0-	(18870)
-12 STATEN ISLAND	-0-	(12952)	-0-	(12952)	-0-	(12952)	-0-	(12952)	-0-	(12952)	-0-	(12952)
-13 TOWN EAST	-0-	(6000)	-0-	(6000)	-0-	(6000)	-0-	(6000)	-0-	(6000)	-0-	(6000)
-14 LAUREL MALL	-0-	(21825)	-0-	(21825)	-0-	(21825)	-0-	(21825)	-0-	(21825)	-0-	(21825)
SUB TOTAL LEASEHOLD IMPROVE.	-0-	273235	-0-	273235	-0-	273235	-0-	273235		273235		273235
37-01-01 ASSETS IN PROCESS	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-				
37-70-00 RESERVE FOR DEPR.												
-01 DESOTO	(406)	(8717)	(406)	(9153)	(406)	(9559)	(406)	(9965)	(406)	(10371)	(406)	(10777)
-02 STATEN ISLAND	(523)	(9892)	(523)	(10415)	(523)	(10938)	(523)	(11461)	(523)	(11984)	(523)	(12507)
-03 TOWN EAST	(371)	(7094)	(371)	(7465)	(371)	(7836)	(371)	(8207)	(371)	(8578)	(371)	(8949)
-04 LAUREL MALL	(303)	(8553)	(303)	(8856)	(303)	(9159)	(303)	(9462)	(303)	(9765)	(303)	(10068)
SUB TOTAL DEPRECIATION	(1603)	(34256)	(1603)	(35889)	(1603)	(37492)	(1603)	(39095)	(1603)	(40698)	(1603)	(42301)
47-01-07 PREPAID EXPENSE	-0-	1	-0-	1	-0-	1	-0-	1	-0-	1	-0-	1
52-00-00 ADVANCE	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-		
53-30-01 A/P SECURITY DEPOSIT	-0-	(15475)	-0-	(15475)	-0-	(15475)	-0-	(15475)	450	(15025)	—	(15025)
59-50-01 RESERVE FOR CONTINGENCY	(750)	(94012)	-0-	(94012)	-0-	(94012)	-0-	(94012)	(125750)	(219762)	—	(219762)
63-01-01 RESERVE FOR EIT (CURRENT)	(1000)	19000	8000	27000	3000	30000	7000	37000	6000	92000	(20000)	72000
63-01-02 " " " (PRIOR)												
76-00-11 COMMON STOCK	-0-	(1000)	-0-	(1000)	-0-	(1000)	-0-	(1000)	-0-	(1000)	-0-	(1000)
78-07-01 RETAINED EARNINGS	-0-	67094	-0-	67094	-0-	67094	-0-	67094	-0-	67094	-0-	67094
PROFIT (LOSS)	2307	(19523)	(9595)	(29118)	(5318)	(26716)	(8489)	(35205)	(6490)	(79955)	(4890)	(104385)

E410
Reference Exhibit C

REPORT NO. 16428383P

THE MAGNAVOX COMPANY
CONSOLIDATED BALANCE SHEET
MAGNA LEASING

LINE NO.	NAME	ASSETS
012	CIVILIAN-CONSUMER ELECTRONICS	25,503
030	TOTAL CIVILIAN RECEIVABLES	25,503
050	TOTAL GOVERNMENT RECEIVABLES	
060	TOTAL ACCOUNTS RECEIVABLES	25,503
078	TOTAL R-TV-FURN & MUS. INVENT	
090	TOTAL CIVILIAN INVENTORIES	
100	GROSS GOVERNMENT INVENTORIES	
104	NET GOVERNMENT INVENTORIES	
115	TOTAL INVENTORIES	
125	PREPAID EXPENSES	5
140	TOTAL CURRENT ASSETS	25,508
160	TOTAL INVESTMENT IN SUBSIDIAR	
180	LEASEHOLD IMPROVEMENT	371,215
190	SUBTOTAL	371,215
195	ACCUMULATED DEPRECIATION	58,621-
200	NET DEPRECIABLE FIXED ASSET	312,594
220	TOTAL FIXED ASSETS - NET	312,594
255	TOTAL OTHER ASSETS	
311	25-02-11 MX. CO. - FW R-TV-PH	9,031-
450	TOTAL INTER & INTRA CO. ACCTS	9,031-
500	TOTAL ASSETS	329,071

E411
Reference Exhibit C

REPORT NO. 16428383P

THE MAGNAVOX COMPANY
CONSOLIDATED BALANCE SHEET
MAGNA LEASING

LINE NO.	NAME	LIABILITIES
510	TOTAL NOTES PAYABLE	
520	ACCOUNTS PAYABLE TRADE	
530	ACCOUNTS PAYABLE OTHER	14,825
550	ACC. WAGES, INTEREST, INSURAN	958,260
560	ACC. TAXES, OTHER THAN FED TA	300-
570	ACC. FEDERAL TAX ON INCOME	14,000-
580	TOTAL CURRENT LIABILITIES	958,785
620	TOTAL LONG TERM LIABILITIES	
650	TOTAL LIABILITIES	958,785
710	COMMON STOCK	1,000
722	RETAINED EARNINGS	171,479-
730	NET PROFIT LOSS- YEAR TO DAT	459,235-
735	SUBTOTAL	629,714-
745	TOTAL STOCKHOLDERS EQUITY	629,714-
750	TOTAL LIABILITIES AND STOCKHO	329,071

E412
Reference Exhibit C

REPORT # 164204130

THE MAGNAVOX COMPANY
DIVISIONAL STATEMENT OF INCOME 09/76
MAGNA LEASING

	RTV	CURR MONTH TOTAL	PRIOR MONTH YEAR-TO-DATE	CURR MONTH YEAR-TO-DATE
GROSS SALES				
RETURNS				
SALES LESS RETURNS				
LESS ALLOWANCES				
NET SALES				
LESS VOLUME INCENTIVE				
LESS S.P.A.				
LESS DUTY AND TAXES				
LESS CASH DISCOUNT				
NET REPORTED SALES				
COST OF SALES				
MATERIAL-STANDARD				
-VARIATION				
PURCHASE DISCOUNT				
LABOR-STANDARD				
-VARIATION				
BURDEN-STANDARD				
-VARIATION				
PRODUCTION ENGINEERING				
DESIGN ENGINEERING				
TOOLS-DIES				
ROYALTIES				
SERVICE AND WARRANTY				
REWORK				
TOTAL COST OF SALES				
GROSS PROFIT				
MARKETING EXPENSE				
ADVERTISING				
TRANS. AND WAREHOUSING		11,922	871,313	883,235
SELLING	11,922	11,922	871,313	883,235
TOTAL MARKETING EXPENSE	11,922			
GENERAL AND ADMIN. EXPENSE				
INTEREST EXPENSE				
IDLE PLANT EXP. & BID & PROPO				
MAGNAVOX RESEARCH EXPENSE				
OTHER -INCOME- EXPENSE				
PROV FOR LOSS ON DISCONTINUED		11,922	871,313	883,235
TOTAL EXPENSES	11,922	11,922	871,313	883,235
PROFIT BEFORE ST. & LOC. INC.	11,922			
STATE & LOCAL INCOME TAX PROV		11,922	871,313	883,235
PROFIT FROM OPERATIONS	11,922			
LESS CORPORATE ADJUSTMENTS		11,922	871,313	883,235
NET PROFIT BEFORE F.I. TAX	11,922	6,000-	418,000-	424,000-
FEDERAL INCOME TAX PROVISION	6,000-			
EXTRA ORDINARY LOSS		5,922	453,313	459,235
NET PROFIT AFTER F.I. TAX	5,922			

E413
Reference Exhibit D
Minutes from Magnaleasing board
of directors meeting

Defendants Exhibit D
11/4/76

STATEMENT OF INCORPORATORS

IN LIEU OF ORGANIZATION

MEETING

OF

MAGNALEASING, INC.

-o-O-o-

The certificate of incorporation of this corporation having been filed in the office of the Secretary of State, the undersigned, being all of the incorporators named in said certificate, do hereby state that the following actions were taken on this day for the purpose of organizing this corporation:

1. The following persons were elected as directors to hold office until the first annual meeting of stockholders or until their respective successors are elected and qualified:

Alfred DiScipio
Daniel F. Minahan
Samuel J. Rozel
Gerald G. Martin

2. The board of directors was authorized to make and adopt the by-laws of the corporation and, in its discretion, to issue the shares of the capital

stock of this corporation to the full amount or number of shares authorized by the certificate of incorporation, in such amounts and for such considerations as from time to time shall be determined by the board of directors and as may be permitted by law.

Dated, March 7th, 1973.

A. E. Wilde
Incorporator

W. F. Ries
Incorporator

R. C. Fuqua
Incorporator

CONSENT TO THE ELECTION OF DIRECTORS
BY SOLE SHAREHOLDER IN LIEU
OF ANNUAL MEETING OF
MAGNALEASING, INC.

THE MAGNAVOX COMPANY, a Delaware corporation, being the sole stockholder of MAGNALEASING, INC., a Delaware corporation, (the "Corporation") pursuant to the By-Laws of the Corporation and the laws of the State of Delaware, DOES HEREBY GIVE ITS CONSENT in writing to the election of A. di Scipio, G. G. Martin, D. F. Minahan, S. J. Rozel, and J. M. Whelan as Directors of MAGNALEASING, INC., to serve during the ensuing year and thereafter until their successors have been elected and qualified to the same effect as though said persons had been elected at a duly held annual meeting of shareholders, and directs that a copy of this Consent be filed with the Secretary of the Corporation.

Dated this 2nd day of May, 1973.

THE MAGNAVOX COMPANY

By J. M. Whelan
J. M. Whelan
Vice President

E416
Reference Exhibit D

MINUTES OF ANNUAL MEETING OF THE BOARD OF DIRECTORS

OF

MAGNALEASINC, INC.

Held at Fort Wayne, Indiana, on
the 2nd day of May, 1973, at the
hour of 5:30 o'clock P.M.

The meeting was called to order by A. di Scipio, who served as Chairman. S. J. Rozel served as Secretary of the Meeting.

The following directors, constituting a quorum, were present:

A. di Scipio
G. G. Martin
D. F. Minahan
S. J. Rozel
J. M. Whelan

The reading of the minutes of the last Directors' meeting was waived.

The Chairman suggested that officers be elected, and thereupon the following persons were nominated to serve as officers of the corporation, to serve during the ensuing year and until their successors shall have been elected and qualified:

President	A. di Scipio
Vice President	J. F. Kelly
Vice President	G. G. Martin
Vice President	G. A. Michaelson
Vice President and Secretary	D. F. Minahan
Vice President and Assistant Secretary	S. J. Rozel
Vice President and Treasurer	J. M. Whelan
Assistant Secretary	J. Kanter
Assistant Secretary	M. F. O'Hara
Assistant Secretary	T. M. Hafner

There being no other nominations, they were declared closed. After a ballot was taken, the Chairman announced that each of the nominees had received the vote of the Directors present, and he thereupon declared that each had been duly elected to the office for which he had been nominated, to serve as such officer for the ensuing year and thereafter until his successor has been elected and qualified.

There being no other or further business to come before the meeting, upon motion duly made and seconded, the same was adjourned.

Secretary of the Meeting

E418
Reference Exhibit D

MINUTES OF A SPECIAL MEETING
OF THE BOARD OF DIRECTORS OF
MAGNALEASING, INC.

Held at Fort Wayne, Indiana
on the 10th day of October,
1973, at the hour of 10:00
o'clock A.M.

The meeting was called to order by A. di Scipio, who served as Chairman. S. J. Rozel served as Secretary of the Meeting.

The following Directors, constituting a quorum, were present:

A. di Scipio
S. J. Rozel
J. M. Whelan

Upon motion duly made and seconded, the reading of the minutes of the last meeting was waived. The Chairman stated that the meeting was called for the purpose of considering and acting upon the resignations of Directors and Officers and filling their vacancies and for the purpose of considering and acting upon such other matters that may be properly brought before the meeting.

The Chairman then stated that D. F. Minahan had submitted his resignation as Director of this Company, effective October 1, 1973. His resignation was accepted.

The Chairman then stated that it would be appropriate to consider a decrease in the number of Directors.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED, that the By-Laws of the Company be and they hereby are amended to provide for a Board of Directors of four (4) members.

The Chairman then stated that D. F. Minahan had submitted his resignation as Vice President and Secretary of the Company, that S. J. Rozel had submitted his resignation as Vice President and Assistant Secretary of the Company, that M. F. O'Hara had submitted his resignation as Assistant Secretary of the Company, and that said resignations were accepted.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED, that effective October 1, 1973, S. J. Rozel be and he hereby is elected as Vice President and Secretary of this Company, to serve until the next election or appointment of officers and until his successor shall be elected and qualifies.

There being no other or further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

S J Rozel

Secretary of the Meeting

E420
Reference Exhibit D

MINUTES OF ANNUAL MEETING OF THE BOARD OF DIRECTORS

OF

MAGNALEASING, INC.

Held at Fort Wayne, Indiana, on
the 1st day of May, 1974, at the
hour of 10:00 o'clock A.M.

The meeting was called to order by A. di Scipio, who served as Chairman. S. J. Rozel served as Secretary of the Meeting.

The following directors, constituting a quorum, were present:

A. di Scipio
G. A. Michaelson
S. J. Rozel
J. M. Whelan

The reading of the Minutes of the last Directors' meeting was waived.

The Chairman suggested that officers be elected, and thereupon the following persons were mominated to serve as officers of the corporation, to serve during the ensuing year and until their successors shall have been appointed or elected and qualified:

President	A. di Scipio
Vice President	J. F. Kelly
Vice President	G. A. Michaelson
Vice President - Secretary	S. J. Rozel
Vice President - Treasurer	J. M. Whelan
Assistant Secretary	T. M. Hafner
Assistant Secretary	J. Kanter
Assistant Secretary	J. D. Keill

There being no other monimations, they were declared closed. After a ballot was taken, the Chairman announced that such of the nominees

had received the vote of the Directors present, and he thereupon declared that each had been duly elected to the office for which he had been nominated, to serve as such officer for the ensuing year and thereafter until his successor has been appointed or elected and qualified.

There being no other or further business to come before the meeting, upon motion duly made and seconded, the same was adjourned.

Secretary of the Meeting

E422
Reference Exhibit D

CONSENT TO THE ADOPTION OF RESOLUTION
AND TO THE ELECTION OF DIRECTORS
BY SOLE SHAREHOLDER IN LIEU
OF ANNUAL MEETING OF
MAGNALEASING, INC.

THE MAGNAVOX COMPANY, a Delaware corporation, being the sole stockholder of MAGNALEASING, INC., a Delaware corporation, (the "Corporation"), pursuant to the By-Laws of the Corporation and the laws of the State of Delaware, DOES HEREBY give its consent in writing to the adoption of the following Resolution:

> RESOLVED, that Section 5 of Article V of the By-Laws of the Corporation be and it hereby is amended to read as follows:
>
> Section 5. Vacancies.
>
> A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled for the unexpired portion of the term by the appointment of a replacement for the office by the President;

and to the election of A. di Scipio, G. A. Michaelson, S. J. Rozel, and J. M. Whelan, as Directors of MAGNALEASING, INC., to serve during the ensuing year and thereafter until their successors have been elected and qualified to the same effect as though said persons had been elected and said Resolution adopted at a duly held annual meeting of shareholders, and directs that a copy of this Consent be filed with the Secretary of the Corporation.

Dated this 1st day of May, 1974.

THE MAGNAVOX COMPANY

By _____
J. M. Whelan
Vice President

CONSENT TO THE ELECTION OF DIRECTORS
BY SOLE SHAREHOLDER IN LIEU
OF ANNUAL MEETING OF
MAGNALEASING, INC.

THE MAGNAVOX COMPANY, a Delaware corporation, being the sole stockholder of MAGNALEASING, INC., a Delaware corporation, (the "Corporation"), pursuant to the By-Laws of the Corporation and the laws of the State of Delaware, DOES HEREBY give its consent in writing to the election of A. di Scipio, K. L. Ingram, G. A. Michaelson, S. J. Rozel and J. M. Whelan, as Directors of MAGNALEASING, INC., to serve during the ensuing year and thereafter until their successors have been elected and qualified to the same effect as though said persons had been elected at a duly held annual meeting of shareholders, and directs that a copy of this Consent be filed with the Secretary of the Corporation.

Dated this 8th day of May, 1975.

THE MAGNAVOX COMPANY

By J. M. Whelan
J. M. Whelan
Vice President

E424
Reference Exhibit D

MINUTES OF ANNUAL MEETING OF THE BOARD OF DIRECTORS

OF

MAGNALEASING, INC.

Held at Fort Wayne, Indiana, on
the 8th day of May, 1975, at the
hour of 10:00 o'clock A.M.

The meeting was called to order by A. di Scipio, who served as Chairman. S. J. Rozel served as Secretary of the Meeting.

The following directors, constituting a quorum, were present:

A. di Scipio
K. L. Ingram
G. A. Michaelson
S. J. Rozel
J. M. Whelan

The reading of the Minutes of the last Directors' meeting was waived.

The Chairman suggested that officers be elected, and thereupon the following persons were nominated to serve as officers of the corporation, to serve during the ensuing year and until their successors shall have been appointed or elected and qualified:

President	A. di Scipio
Vice President	J. F. Kelly
Vice President	K. L. Ingram
Vice President	G. A. Michaelson
Vice President and Secretary	S. J. Rozel
Vice President and Treasurer	J. M. Whelan
Assistant Secretary	J. Kanter
Assistant Secretary	T. M. Hafner
Assistant Secretary	J. D. Keill

There being no other nominations, they were declared closed. After a ballot was taken, the Chairman announced that such of the nominees had received the vote of the Directors present, and he thereupon declared that each had been duly elected to the office for which he had been nominated, to serve as such officer for the ensuing year and thereafter until his successor has been appointed or elected and qualified.

There being no other or further business to come before the meeting, upon motion duly made and seconded, the same was adjourned.

Secretary of the Meeting

E426
Reference Exhibit E - Excerpts
re northeastern regional shopping
centers from The Dollar and
Cents of Shopping Centers

Defs Ex. E
11/4/76

72

DEFENDANTS' EXHIBIT E

Regional Centers in Northeast

Table 2-2

Regional Shopping Centers in the Northeast Operating Results Per Square Foot of GLA

Numbers of Centers in Sample: 17	Dollars per square foot of GLA		Percent of total receipts	
	Median	Middle-range	Median	Middle-range
Gross Leasable Area	604,577	470,047-813,061		
Tenant Sales	$60.22	$57.16-$69.08		
Operating Receipts:				
rent	$ 2.03	$ 1.80-$ 3.32	83.7%	76.8%- 90.7%
common area charges	.27	.13- .32	7.9%	4.7%- 9.9%
other charges	.39	.11- .47	9.5%	4.4%- 14.3%
Total Operating Receipts	$ 2.68	$ 2.12-$ 3.82	100.0%	100.0%-100.0%
Operating Expenses:				
building maintenance	$ .02	$ .01-$ .10	7%	1%- 4.3%
parking lot, mall and other public areas	.28	.13- .38	7.9%	4.9%- 12.5%
central utility systems	.17	.09- .26	3.9%	3.3%- 6.4%
office area services	—	— —	—	—
Total Maintenance and Housekeeping Expenses	$ .50	$ .25-$ .63	15.1%	9.2%- 19.6%
advertising and promotion	$ .03	$ .03-$ .06	1.2%	7%- 1.6%
real estate taxes	$ .32	$ .20- .36	11.7%	6.8%- 15.4%
insurance	.04	.03- .06	1.5%	.5%- 2.1%
general and administrative	.15	.10- .21	5.7%	2.8%- 8.3%
Total Operating Expenses	$ 1.07	$ .83-$ 1.32	40.7%	22.7%- 46.7%
Operating Balance	$ 1.51	$ 1.07-$ 2.83	59.3%	52.2%- 73.4%

Table 2-3

Comparison of Sales and Rent of Principal Tenants in Regional Centers and in Northeastern Regional Centers

Tenant Classification	Sales volume per square foot GLA		Total rent per square foot GLA	
	All regional median	Northeastern regional median	All regional median	Northeastern regional median
Department stores	$55.88	$49.01	$1.46	$1.47
Junior department stores	50.63	55.69	2.00	1.72
Variety stores	34.23	41.30	1.99	1.68
Supermarkets	96.[illegible]	97.84	1.74	1.73
Drug stores	65.45	59.23	2.25	2.82

Northeast

Table 4–2
Regional Shopping Centers in the NORTHEAST Operating Results Per-Square-Foot of GLA

Number of Centers In Sample: 24	Dollars per-square-foot of GLA Median	Lower Decile	Upper Decile	Percent of total receipts Median	Lower Decile	Upper Decile
Gross leasable area of mall shops	262,550	189,510	571,207			
Gross leasable area	410,965	199,071	742,916			
Total area	613,592	323,704	833,940			
Mall tenant sales	$86.14	$59.00	$112.44			
Operating Receipts:						
Rent	$ 3.63	$ 1.53	$ 5.14	84.7%	57.3%	91.6%
Common area charges	.32	.02	.75	8.8%	1.5%	16.8%
Other charges	.31	.01	1.54	6.0%	.3%	24.6%
Total Operating Receipts	$ 4.32	$ 1.96	$ 7.17	100.0%	100.0%	100.0%
Operating Expenses:						
Building maintenance	$ .05	$ .01	$ .18	1.0%	.5%	5.1%
Parking lot, mall and other public areas	.51	.03	.81	10.4%	2.4%	15.9%
Central utility systems	.21	.03	.69	4.3%	1.1%	16.1%
Office area services	.03	.00	.10	.8%	.1%	2.4%
Total Maintenance and Housekeeping Expenses	$ .68	$ .20	$ 1.49	15.6%	6.6%	30.2%
Advertising and promotion	$ .05	$ .02	$ .14	1.3%	.5%	2.0%
Real estate taxes	.39	.21	.94	11.4%	6.9%	16.9%
Insurance	.05	.02	.14	1.5%	.6%	2.4%
General and administrative	.18	.08	.51	5.2%	2.0%	8.8%
Total Operating Expenses	$ 1.49	$ .59	$ 3.15	39.1%	21.7%	54.4%
Operating Balance	$ 3.05	$ 1.57	$ 4.91	60.8%	27.6%	76.4%

Note: Because data are medians and deciles, detail amounts do not add to totals.

Table 4–3
Comparison of Sales and Rent of Principal Tenants in Regional Centers and in NORTHEASTERN Regional Centers

Tenant Classification	Sales Volume per-square-foot GLA All Regional Median	Northeastern Regional Median	Total Rent per-square-foot GLA All Regional Median	Northeastern Regional Median
Department stores	$ 58.61	$ 69.06	$1.69	$1.65
Junior department stores	54.11	85.40	2.82	3.30
Variety stores	36.75	49.27	2.35	2.96
Supermarkets	113.55	151.75	2.15	2.41
Drug stores	79.84	76.58	3.28	5.24

E428
Reference Exhibit F - Excerpts re operating results of enclosed mall regional shopping centers from The Dollar and Cents of Shopping Centers

Defs Ex. F
11/4/76

DEFENDANTS' EXHIBIT F

Operating Results of Enclosed Mall Regional Shopping Centers

One to Three Years Old Enclosed Mall Regional Shopping Centers Operating Results

Number in Sample: 23	Dollars per square foot of GLA Median	Middle-range	Percent of total capital cost Median	Middle-range
Sales	$51.14	$39.97-$59.09		
Operating receipts	2.24	2.05- 3.42	13.2%	12.1%- 16.5%
Operating expenses	.80	.55- 1.35	4.2%	2.5%- 6.4%
Operating balance	1.65	1.35- 2.13	10.2%	8.0%- 11.2%

Four to Six Years Old Enclosed Mall Regional Shopping Centers Operating Results

Number in Sample: 17	Dollars per square foot of GLA Median	Middle-range	Percent of total capital cost Median	Middle-range
Sales	$63.36	$59.09-$69.97		
Operating receipts	2.93	1.99- 3.74	15.6%	13.2%- 16.5%
Operating expenses	.96	.70- 1.07	4.8%	3.3%- 6.2
Operating balance	1.47	1.06- 2.68	10.7%	6.9%- 12.1%

The median sales per square foot of enclosed mall shopping centers 4 to 6 years of age are $63.36. The sales of the more mature centers is $12.22 higher than the median sales per square foot of the 23 regional enclosed mall shopping centers which are one to three years of age. For the older group of enclosed mall shopping centers the median operating receipts are $2.93 per square foot. This is $.69 more than the operating receipts of the younger regional enclosed mall centers. The operating expenses of the 4 to 6 year old regional enclosed mall centers are typically $.96 per square foot of GLA. The median operating balance is $1.47 per square foot of GLA: the operating balance as a percentage of total capital cost is 10.7 percent.

The reader is cautioned that information presented above is not meant to reflect industry standards, norms, or trends among the enclosed mall shopping centers. Data here reported merely show operating results as experienced and reported by a representative group of this type of regional shopping center. Furthermore, the factors discussed may not be all-inclusive for conditions of design, management and tenancies which would present a complete picture of an enclosed mall shopping center operation. As operations mature there will be substantially more experience and data available on the operating results of enclosed mall shopping centers. As this experience and participation in the study increases, a presentation of operating information on enclosed mall centers can be refined and made more extensive.

C. Operating Results by Center Age Group

Shopping Centers by Age Group

Age Group	Years Center Opened
1, 2 and 3 years old	1973, 1972, 1971
4, 5 and 6 years old	1970, 1969, 1968
7, 8 and 9 years old	1967, 1966, 1965
10 years old and over	1964 and earlier

The previous presentation shows the variations in the operating results of regional shopping centers in different geographical areas. Useful information is also provided by analyzing the variations in operating results of shopping centers by their age grouping.

The operating results of centers vary substantially in different age groups. These variations are pointed out in the following discussion. The reader is cautioned, however, against interpreting these differences as trends.

The information shown here is determined by grouping the participating centers according to their age. As such, each age group consists of different centers. Valid trends could be supported only by analyzing a group of the same centers as they grow older. See the discussion of "Changes in Operating Results" presented in the **Supplementary Information** section of this report for the analysis of repeating centers.

Each center is classified according to its age into one of the following groups: one, two and three years old; four, five and six years old; seven, eight and nine years old; and ten years old and over. The medians are selected from the operating results for each age group. The tables that follow show the variations in the typical operating results by each age group.

The median sales are highest in the group of shopping centers which are seven, eight and nine years old. Median receipts are also highest for this group at $5.06 per-square-foot of GLA of mall shops, due in large measure to the total rent of $4.51 per-square-foot of GLA of mall shops. Similarly, median expenses are greatest for this group, at $1.60 per-square-foot of GLA.

For further information on centers in various age groups, the reader is referred to the supplementary section on "Operating Results in Relation to Capital Costs," which discusses operating results in terms of the percentage of total capital cost, and the analysis of funds after debt service by age group in this section.

Table 4–14
Typical Operating Results Per-Square-Foot of GLA
Regional Shopping Centers in Different Age Groups: 1, 2 and 3 Years Old

	Dollars per-square-foot of GLA			Percent of total receipts		
Number of Centers in Sample: 16	Median	Lower Decile	Upper Decile	Median	Lower Decile	Upper Decile
Gross leasable area of mall shops	215,790	72,412	322,603			
Gross leasable area	290,997	163,734	488,438			
Total area	523,094	168,553	787,167			
Mall tenant sales	$65.99	$51.86	$104.14			
Operating Receipts:						
Rent	$ 3.61	$ 1.46	$ 4.75	84.9%	74.0%	94.0%
Common area charges	.48	.04	.74	8.6%	3.3%	18.1%
Other charges	.12	.02	.73	2.3%	.3%	11.5%
Total Operating Receipts	$ 4.17	$ 1.55	$ 6.29	100.0%	100.0%	100.0%
Operating Expenses:						
Building maintenance	$ .05	$ .00	$ .30	1.9%	.1%	8.7%
Parking lot, mall and other public areas	.19	.00	.80	5.5%	1.0%	16.4%
Central utility systems	.07	.01	.53	2.5%	.5%	8.9%
Office area services	.02	.00	.06	.8%	.1%	1.4%
Total Maintenance and Housekeeping Expenses	$ .49	$ .10	$ 1.16	13.2%	3.6%	21.1%
Advertising and promotion	$ .04	$ .01	$ .23	1.0%	.4%	4.3%
Real estate taxes	.21	.06	.49	7.0%	1.9%	12.7%
Insurance	.04	.02	.07	1.2%	.5%	1.9%
General and administrative	.16	.04	.34	3.6%	1.3%	8.9%
Total Operating Expenses	$ 1.20	$ .29	$ 1.86	28.3%	12.5%	47.0%
Operating Balance	$ 3.22	$ 1.67	$ 4.75	71.6%	35.7%	84.1%

Note: Because data are medians and deciles, detail amounts do not add to totals.

Reference Exhibit G - Document entitled "Summary: Alternative Measures of Inflation at Shopping Center"

Defs Ex. G
11/4/76

DEFENDANTS' EXHIBIT G

SUMMARY:
ALTERNATIVE MEASURES OF INFLATION
AT SHOPPING CENTER

	1972	1975	% Change
Plaintiff's measure:			
Operating expenses (less real estate taxes) of northeastern regional malls of median* size.	$ .75 per square foot per year	$1.10 per square foot per year	+46% or 15.5% per year
Defendants' measure(s):			
Operating expenses (less real estate taxes) of northeastern regional malls of comparable size.**	.63	1.10	+74.6% or 24.9% per year
Operating expenses of regional malls 1, 2, and 3 years old.	.80	1.86	+133% or 42.2% per year
Common area charges at northeastern regional malls of comparable size.**	.13	.32	+146% or 48.7% per year

* The "median" northeastern regional mall in the 1972 survey was 604,577 square feet of gross leasable area; in 1975 it was 410,965 square feet.

** The lower middle-range northeastern regional mall in the 1972 survey was 470,047 square feet of gross leasable area; as stated above, the "median" northeastern regional mall in 1975 was 410,965 square feet.

E431
Reference Exhibit H - Excerpts from Lease dated April 2, 1973, between Staten Island Mall and Brooks Fashion Stores, Inc.

Defs Ex. H
11/4/76

Lease

STATEN ISLAND MALL

Staten Island, New York

LANDLORD: STATEN ISLAND MALL

TENANT: BROOKS FASHION STORES, INC.

E432
Reference Exhibit H

STATEN ISLAND MALL

Staten Island, New York

LEASE

Article I. Fundamental Lease Provisions and Exhibits

Section 1.1. *Fundamental Lease Provisions.*

Date: April 2, 1973

Landlord: Staten Island Mall, a joint venture comprised of Blackfriars Realty Corp., a New York Corporation, and Tottenham Realty Corp., a New York Corporation.

Address of Landlord: 58 Park Place, Newark, New Jersey 07102.

Tenant: Brooks Fashion Stores, Inc.

Address of Tenant: 505 Eighth Avenue, New York, New York 10018

Tenant's Trade Name: Brooks

Demised Premises: As shown on the space plan attached hereto as Exhibit B (the building in which the Demised Premises are located being designated "C" on Exhibit A and hereinafter referred to as the "Building").

Lease Term: Fifteen (15) Lease Years (plus a Partial Lease Year, if any, prior to the First Lease Year).

Fixed Minimum Rent: $ 20,280.00 per annum, computed at the rate of $ 6.00 per square foot of Floor Space of the Demised Premises and subject to final adjustment and determination pursuant to Section 2.3.

ESCALATION:

(a) Fixed Minimum Rent to be increased by 10% upon the opening of the Third Department Store;

(b) Fixed Minimum Rent to be increased by 10% upon the opening of the Fourth Department Store;

~~(c) Fixed Minimum Rent to be increased by $1.00 per annum per square foot of Floor Space of the Demised Premises on the first day of the sixteenth lease year, and~~

~~(d) Fixed Minimum Rent to be increased by $1.00 per annum per square foot of Floor Space of the Demised Premises on the first day of the twenty-first lease year.~~

PERCENTAGE RENT RATE: Five (5%) Percent.

PERCENTAGE RENT PERIODS: ~~Quarter~~-annual (Commencing February 1, ~~May 1, August 1 and November 1)~~

PERMITTED USES: Solely for the sale at retail of junior and misses arel and accessories related directly thereto.

LANDLORD'S CONTRIBUTION FOR TENANT'S WORK: See Rider

DAYS FOR COMPLETION OF TENANT'S WORK: 90 days from the date for the commencement of Tenant's Work pursuant to Section 3.3.

LAE

Partial Lease Year and enumerating all exclusions from Gross Sales permitted by Section 4.3B. The certification by said accountant shall expressly state that the Gross Sales and the exclusions from Gross Sales shown on the Annual Statement conform to and are computed in compliance with Section 4.3B. Once in every 12 month period, upon 7 days' written notice, Landlord, by its accountants or representatives shall have the right to audit all statements of Gross Sales and exclusions from Gross Sales and in connection with such audits to examine all of the Tenant's records relating to Gross Sales and exclusions from Gross Sales (including Tenant's New York City and New York State sales tax returns and all supporting data and any other records from which Gross Sales may be tested or determined), and Tenant shall make all such records readily available for such examination. If any such audit discloses that the actual Gross Sales transacted by Tenant exceed those reported, Tenant shall forthwith pay to Landlord any additional Percentage Rent as may be so shown to be payable and, if the actual Gross Sales so disclosed shall exceed by more than 3% ~~2%~~ the Gross Sales reported by Tenant, Tenant shall also then pay the cost of such audit and examination. Any information obtained by Landlord pursuant to the provisions of this Section shall be treated as confidential, except in the event such information is subpoenaed or in connection with any litigation or arbitration proceedings between the parties and, except further, that Landlord may disclose such information to prospective buyers, to prospective or existing lenders, and in any registration statement filed with the Securities and Exchange Commission or other similar body.

D. On or before the ~~15th~~ * day after the expiration of each Percentage Rent Period, and on or before the ~~15th~~ * day after the Expiration Date, Tenant shall pay to Landlord, as Percentage Rent, a sum equal to the amount, if any, by which the cumulative Gross Sales transacted during the then current Lease Year to and including the expiration date of such Percentage Rent Period, multiplied by the Percentage Rent Rate, exceeds the aggregate of the Fixed Minimum Rent ~~and Percentage Rent~~ theretofore paid for the then current Lease Year. ~~Upon furnishing~~ the Annual Statement to Landlord, Tenant shall pay the balance of Percentage Rent due, if any. If, at the end of any Lease Year, the total amount of Fixed Minimum Rent and Percentage Rent paid by Tenant exceeds the total amount of Fixed Minimum Rent and Percentage Rent required to be paid by Tenant during such Lease Year, Tenant shall receive a credit equal to such excess which shall be deducted by Tenant from the payments of Fixed Minimum Rent and Percentage Rent next due.

BEST COPY AVAILABLE

SECTION 4.4. *Definition of Lease Year.* The term "Lease Year" is defined to mean a period of 12 consecutive calendar months, the first Lease Year ("First Lease Year") to commence on the first day of February following the Commencement Date and each succeeding Lease Year to commence on the anniversary date of the First Lease Year. Any portion of the Lease Term which is less than a Lease Year as hereinbefore defined shall be deemed a "Partial Lease Year." Any reference in this Lease to a "Lease Year" shall, unless the context clearly indicates otherwise, be deemed to be a reference to a "Partial Lease Year" if the period in question involves less than a period of twelve consecutive calendar months.

SECTION 4.5. *Tax Rent.* A. For the purposes of this Lease the term "Taxes" shall include all real estate taxes, assessments, special or otherwise, water and sewer rents, county taxes, transit taxes and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the Lease Term be levied, assessed, imposed, become due and payable, or arise in connection with the use, occupancy or possession of, or grow due or payable out of, or for, the Shopping Center or any part thereof, or any land, buildings or other improvements therein, excluding, however, any of the foregoing attributable to Common Areas (other than the Covered Mall) or relating to any one parcel included in the Shopping Center which, except for insignificant portions thereof, is

60th

KD

* and a copy of the applicable statute

occupied by only one occupant and which comprises a separate tax lot or lots for the purpose of assessment for real estate taxes. Whether or not Landlord shall take the benefit of the provisions of any statute or ordinance permitting any assessment for public betterments or improvements to be paid over a period of time, Landlord shall, nevertheless, be deemed to have taken such benefit so that the term "Taxes" shall include only the current annual installment of any such assessment and the interest on unpaid installments. As soon as practicable prior to the Commencement Date and as soon as practicable prior to the commencement of each Lease Year, Landlord will submit to Tenant a statement* reasonably estimating the Taxes payable during the next succeeding Lease Year ("Tax Statement"). Each Tax Statement shall be conclusive and binding upon Tenant unless within 30 days after receipt of such Tax Statement Tenant shall notify Landlord that it disputes the correctness of the Tax Statement, specifying the respects in which the Tax Statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall pay Tax Rent in accordance with the applicable Tax Statement, and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, the amount of Tenant's overpayment of Tax Rent resulting from compliance with the Tax Statement will be credited against Tenant's next monthly payments of Tax Rent.

B. On the first day of each month during the Lease Term Tenant shall pay to Landlord, as Additional Rent, in advance, the amount determined by (i) multiplying 1/12 of all Taxes shown on the last rendered Tax Statement by a fraction, the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the Floor Space of all * ~~[illegible]~~ space in the Shopping Center, excluding Floor Space in any building which has been excluded pursuant to Section 4.5A or 4.5C, (the Floor Space for purposes of the calculation of the denominator to be determined as of the first day of the month in question), and (ii) subtracting therefrom an amount equal to 1/12 of 25¢ per square foot of Floor Space of the Demised Premises. The amount paid by Tenant pursuant to this sentence is called "Tax Rent." Within 60 days after each Lease Year, Landlord shall furnish Tenant with a comparative statement of Tax Rent paid by Tenant for the preceding Lease Year based on the Tax Statement and the amount of Tax Rent Tenant should have paid based on the Taxes actually paid by Landlord during the preceding Lease Year. Any deficiency in Tax Rent will be due and payable by Tenant within 10 days after receipt of such comparative statement and any overage in Tax Rent will be credited by Landlord against the next succeeding payments of Tax Rent due from Tenant. If any Tax shall be levied, assessed or imposed for any fiscal period which does not contain 12 months, then, in making the computation of Tax Rent for each month in such fiscal period, there shall be included in the computation, in lieu of 1/12 of such Tax, that fraction thereof arrived at by dividing such Tax by the number of months in such fiscal period.

C. Landlord, at its option, may exclude from Taxes all real estate taxes and other impositions of the type described in Subsection A of this Section levied, imposed or otherwise attributable to (a) a parcel or parcels of land and the buildings or improvements thereon designated on Exhibit A as "Future Development" or "Convenience Center," (b) a parcel or parcels of land and any free-standing building which shall be constructed thereon, and (c) a parcel or parcels of land and the buildings and improvements thereon, provided such buildings and improvements are used for other than retail purposes. In the event Landlord elects to exclude from Taxes the real estate taxes and other impositions relating to any of such parcels, the Floor Space in any building or buildings on such parcels shall be excluded from the Floor Space of all ~~leased or occupied~~ * space in the Shopping Center for purposes of calculating the Tax Rent payable by Tenant pursuant to Subsection B of this Section. **

D. No inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax or capital levy that is or may be imposed upon Landlord shall be deemed to be included in Taxes; provided, however, that, if at any time during

* leasable
** See Rider

LG

SECTION 5.3. *Common Area Charges.* A. As used herein:

(i) The term "Common Area Charges" shall mean an amount equal to the sum of (a) the actual cost of operating, managing, equipping, cleaning, lighting, repairing, replacing and otherwise maintaining the Common Areas and maintaining order and security therein, including, but not limited to, all costs of insurance relating thereto, all Taxes allocable thereto (other than those payable by Tenant pursuant to Section 4.5) and all costs of maintaining and operating sewerage treatment facilities and meter equipment rooms, and (b) 15% of the costs referred to in (a) above in respect of administrative overhead, less (c) the amount paid by occupants of any Department Store in respect of any of the above costs.*

(ii) The term "Tenant's Proportionate Share of Common Area Charges" shall mean an amount equal to the Common Area Charges multiplied by a fraction the numerator of which shall be the Floor Space of the Demised Premises and the denominator of which shall be the Floor Space of all [illegible] space in the Shopping Center devoted to the purpose of selling goods and/or consumer services to the public at retail excluding the Floor Space located in any Department Store and the Floor Space in any building which has been excluded pursuant to Subsection C of this Section.

B. Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of Common Area Charges in equal monthly installments in advance on the first day of each calendar month. Landlord shall furnish to Tenant, for each Lease Year, a statement of (i) the actual Common Area Charges for the prior Lease Year (or Partial Lease Year), (ii) Tenant's Proportionate Share of Common Area Charges for the prior Lease Year (or Partial Lease Year), (iii) the amount paid by Tenant during the prior Lease Year (or Partial Lease Year) in respect of such Common Area Charges, (iv) either the deficiency or overage in such payments and (v) Landlord's estimate of Tenant's Proportionate Share of Common Area Charges for the then current Lease Year. Any deficiency in payment by Tenant shown on any statement for the prior Lease Year (or Partial Lease Year) shall be due and payable within thirty (30) days after the receipt of such statement and any overage in payment will be credited against the next succeeding payments of Tenant's Proportionate Share of Common Area Charges. After receipt of a statement, Tenant shall pay to Landlord on the first day of each succeeding calendar month an amount equal to one-twelfth (1/12) of Landlord's estimate of Tenant's Proportionate Share of Common Area Charges as shown on such statement until receipt of a new statement. If a statement is furnished to Tenant after the commencement of a Lease Year, Tenant shall pay to Landlord, within thirty (30) days after the receipt of such statement or Landlord shall credit against the next succeeding payments of Tenant's Proportionate Share of Common Area Charges, an amount equal to the deficiency or overpayment allocable to the part of the Lease Year which shall have elapsed prior to the first day of the calendar month next succeeding the calendar month in which the statement is furnished to Tenant. In no event shall Tenant's Proportionate Share of Common Area Charges be reduced to an amount less than Tenant's Proportionate Share of Common Area Charges reflected in the first statement furnished by Landlord to Tenant. Each statement shall be conclusive and binding upon Tenant unless within thirty (30) days after receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the respect in which the statement is claimed to be incorrect. Pending the determination of such dispute by agreement or otherwise, Tenant shall pay Tenant's Proportionate Share of Common Area Charges in accordance with the then current statement and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, the amount of Tenant's overpayment of Tenant's Proportionate Share of Common Area Charges resulting from compliance with Landlord's estimate will be credited against the next succeeding payments of Tenant's Proportionate Share of Common Area Charges. For purposes of the period from the Commencement Date to the date

Common Area Charges shall not include original plantings or installation of flowers or shrubs.

leasable

LDE

DEFENDANTS' EXHIBIT I-1 11/4/76

SCHEDULE OF COMMON AREA OVERPAYMENT
STATEN ISLAND MALL

I. These computations assume a 15.5% annual inflation rate and assume further that Magnaleasing had negotiated to pay on a "leasable" basis.

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
8-73	137.97	138.87	138.87	-	137.97	-
9-73	179.95	181.30	181.30	-	179.95	-
10-73	179.95	181.30	181.30	-	179.95	-
11-73	179.95	181.30	181.30	-	179.95	-
12-73	179.95	181.30	179.95	179.95	-	-
1-74	179.95	181.30	181.30	179.95	-	-
Magnaleasing Overpayment 8-73 to 1-74 . . . . . - (3,626 sq. ft. x .60 per sq. ft. ÷ 12 = 181.30 per mo.)						
2-74	779.59	595.27	208.49	179.95	599.64	386.78
3-74	779.59	595.27	208.49	179.95	599.64	386.78
4-74	799.59	595.27	208.49	179.95	599.64	386.78
5-74	799.59	595.27	208.49	179.95	599.64	386.78
6-74	799.59	595.27	208.49	179.95	599.64	386.78
7-74	799.59	595.27	208.49	179.95	599.64	386.78
8-74	799.59	595.27	208.49	179.95	599.64	386.78
9-74	799.59	595.27	208.49	179.95	599.64	386.78
10-74	799.59	595.27	208.49	-	799.59	386.78
11-74	779.59	595.27	208.49	-	799.59	386.78
12-74	799.59	595.27	208.49	-	3,710.29	3,317.48
1-75	799.59	595.27	208.49	-	799.59	386.78

Magnaleasing Overpayment 2-74 to 1-75 . . . . . .$7,572.06
(3,626 sq. ft. x 1.97 per sq. ft. ÷ 12 = 595.27 per mo).

E441
Reference Exhibit I-1

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
2-75	779.59	595.27	241.73	-	779.59	353.54
3-75	779.59	595.27	241.73	-	779.59	353.54
4-75	779.59	595.27	241.73	-	779.59	353.54
5-75	779.59	595.27	241.73	-	779.59	353.54
6-75	779.59	595.27	241.73	-	779.59	353.54
7-75	779.59	595.27	241.73	-	779.59	353.54
8-75	779.59	595.27	241.73	-	779.59	353.54
9-75	779.59	595.27	241.73	-	779.59	353.54
10-75	779.59	595.27	241.73	-	779.59	353.54
11-75	779.59	595.27	241.73	-	779.59	353.54
12-75	779.59	595.27	241.73	-	779.59	353.54
1-76	779.59	595.27	241.73	-	779.59	353.54

Magnaleasing Overpayment 2-75 to 1-76 . . . . . $4,242.48
(3,626 sq. ft. x 1.97 per sq. ft. ÷ 12 = 595.27 per mo.)

2-76	779.59	595.27	277.99	-	779.59	317.28
3-76	779.59	595.27	277.99	-	779.59	317.28
4-76	779.59	595.27	277.99	-	779.59	317.28
5-76	779.59	595.27	277.99	-	779.59	317.28
6-76	779.59	595.27	277.99	-	779.59	317.28

Magnaleasing Overpayment 2-76 to 6-76 . . . . . $1,586.40
(3,626 sq. ft. x 1.97 per sq. ft. ÷ 12 = 595.27 per mo.)

7-76	779.59	595.27	-	-	779.59	$ 595.27

E442
Reference Exhibit I-1

Interest on Common Area Overpayment Damages

Period 8-73 to 1-74	---
Period 2-74 to 1-75	
Thru year $(7{,}572.06 \div 2 \times 6\% \times \frac{12}{12})$ =	$ 227.16
2-75 to 6-76 $(7{,}572.06 \times 6\% \times \frac{12}{12})$	605.76
	$ 832.92
Period 2-75 to 1-76	
Thru year $(4{,}242.48 \div 2 \times 6\% \times \frac{12}{12})$ =	$ 127.27
1-76 to 6-76 $(4{,}242.48 \times 6\% \times \frac{6}{12})$ =	127.27
	$ 254.54
Period 2-76 to 6-76	
Thru year $(1{,}586.40 \div 2 \times 6\% \times \frac{4}{12})$ =	$ 15.86
Period 7-76	$ -
Total Interest	$1,103.32

Summary of Common Area Overpayment Damages

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	7,572.06
Period 2-75 to 1-76	4,242.48
Period 2-76 to 6-76	1,586.40
Period 7-76	595.27
	$13,996.21

Summary of Common Area Overpayment and interest Damages

Total Overpayment Common Area Damages . .	$13,996.21
Total Interest Common Area Damages . . .	1,103.32
Total Common Area Damages	$15,099.53

DEFENDANTS' EXHIBIT I-2 11/4/76

SCHEDULE OF COMMON AREA OVERPAYMENT
STATEN ISLAND MALL

II. These computations assume a 24.9% annual inflation rate and take into account Magnaleasing's "leased" basis.

Date	Billed by S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
8-73	137.97	138.59	-	137.97	-
9-73	179.95	181.30	-	179.95	-
10-73	179.95	181.30	-	179.95	-
11-73	179.95	181.30	-	179.95	-
12-73	179.95	181.30	179.95	-	-
1-74	179.95	181.30	179.95	-	-
Magnaleasing Overpayment 8-73 to 1-74..... - (3,626 square feet x .60 per square foot ÷ 12 = $181.30 per month)					
2-74	779.59	226.63	179.95	599.64	552.96
3-74	779.59	226.63	179.95	599.64	552.96
4-74	779.59	226.63	179.95	599.64	552.96
5-74	779.59	226.63	179.95	599.64	552.96
6-74	779.59	226.63	179.95	599.64	552.96
7-74	779.59	226.63	179.95	599.64	552.96
8-74	779.59	226.63	179.95	599.64	552.96
9-74	779.59	226.63	179.95	599.64	552.96
10-74	779.59	226.63	-	779.59	552.96
11-74	779.59	226.63	-	779.59	552.96
12-74	779.59	226.63	-	3,710.29	3,483.66

E445
Reference Exibit I-2

Date	Billed by S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
1-75	779.59	266.63	-	779.59	559.96

Magnaleasing Overpayment 2-74 to 1-75..... $9,566.00
(3,626 square feet x .75 per square foot ÷ 12 = $226.63 per month)

2-75	779.59	284.03	-	779.59	495.56
3-75	779.59	284.03	-	779.59	495.56
4-75	779.59	284.03	-	779.59	495.56
5-75	779.59	284.03	-	779.59	495.56
6-75	779.59	284.03	-	779.59	495.56
7-75	779.59	284.03	-	779.59	495.56
8-75	779.59	284.03	-	779.59	495.56
9-75	779.59	284.03	-	779.59	495.56
10-75	779.59	284.03	-	779.59	495.56
11-75	779.59	284.03	-	779.59	495.56
12-75	779.59	284.03	-	779.59	495.56
1-76	779.59	284.03	-	779.59	495.56

Magnaleasing Overpayment 2-75 to 1-76..... $5,946.72
(3,626 square feet x .94 per square foot ÷ 12 = $284.03 per month)

2-76	779.59	353.53	-	779.59	426.06
3-76	779.59	353.53	-	779.59	426.06
4-76	779.59	353.53	-	779.59	426.06
5-76	779.59	353.53	-	779.59	426.06
6-76	779.59	353.53	-	779.59	426.06

Magnaleasing Overpayment 2-76 to 6-76..... $2,130.30
(3,626 square feet x 1.17 per square foot ÷ 12 = $353.53 per month)

7-76	779.59	-	-	779.59	779.59

INTEREST ON COMMON AREA OVERPAYMENT CHARGES

Period 8-73 to 8-74	-
Period 2-74 to 1-75	
Thru year	
9,566.22 ÷ 2 x 6% =	286.99
2-75 to 6-76	
9,566.22 x 6% x 16/12 =	765.30
Period 2-75 to 1-76	
Thru year	
5,946.72 ÷ 2 x 6% =	178.40
1-76 to 6-76	
5,946.72 x 6% x 6/12 =	178.40
Period 2-76 to 6-76	
Thru year	
2,130.30 ÷ 2 x 6% x 4/12 =	21.30
Period 7-76	0
Total Interest	$1,430.99

SUMMARY OF COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	9,566.22
Period 2-75 to 1-76	5,946.72
Period 2-76 to 6-76	2,130.30
Period 7-76	779.59

SUMMARY OF COMMON AREA OVERPAYMENT AND INTEREST DAMAGES

Total Overpayment Common Area Damages	$18,422.79
Total Interest on Common Area Damages	1,430.99
Total Common Area Damages	$19,853.78

E448
Reference Exhibit I-3
Schedules of common area
overpayment

DEFENDANTS' EXHIBIT I-3 11/4/76

SCHEDULE OF COMMON AREA OVERPAYMENT
STATEN ISLAND MALL

IIA. These computations assume a 24.9% annual inflation rate and assume further that Magnaleasing had negotiated to pay on a "leasable" basis.

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
8-73	137.97	137.87	138.59	-	137.97	-
9-73	179.95	179.95	181.30	-	179.95	-
10-73	179.95	179.95	181.30	-	179.95	-
11-73	179.95	179.95	181.30	-	179.95	-
12-73	179.95	179.95	181.30	179.95	-	-
1-74	179.95	179.95	181.30	179.95	-	-
Magnaleasing Overpayment 8-73 to 1-74..... - (3,626 square feet x .60 per square foot ÷ 12 = $181.30 per month)						
2-74	779.59	595.27	226.63	179.95	599.64	368.64
3-74	779.59	595.27	226.63	179.95	599.64	368.64
4-74	779.59	595.27	226.63	179.95	599.64	368.64
5-74	779.59	595.27	226.63	179.95	599.64	368.64
6-74	779.59	595.27	226.63	179.95	599.64	368.64
7-74	779.59	595.27	226.63	179.95	599.64	368.64
8-74	779.59	595.27	226.63	179.95	599.64	368.64
9-74	779.59	595.27	226.63	179.95	599.64	368.64
10-74	779.59	595.27	226.63	-	779.59	368.64
11-74	779.59	595.27	226.63	-	779.59	368.64
12-74	779.59	595.27	226.63	-	3,710.29	3,299.34

E449
Reference Exhibit I-3

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
1-75	779.59	595.27	266.63	-	779.59	368.64

Magnaleasing Overpayment 2-74 to 1-75..... $7,354.38
(3,626 square feet x 1.97 per square foot ÷ 12 = $595.27 per month)

2-75	779.59	595.27	284.03	-	779.59	311.24
3-75	779.59	595.27	284.03	-	779.59	311.24
4-75	779.59	595.27	284.03	-	779.59	311.24
5-75	779.59	595.27	284.03	-	779.59	311.24
6-75	779.59	595.27	284.03	-	779.59	311.24
7-75	779.59	595.27	284.03	-	779.59	311.24
8-75	779.59	595.27	284.03	-	779.59	311.24
9-75	779.59	595.27	284.03	-	779.59	311.24
10-75	779.59	595.27	284.03	-	779.59	311.24
11-75	779.59	595.27	284.03	-	779.59	311.24
12-75	779.59	595.27	284.03	-	779.59	311.24
1-76	779.59	595.27	284.03	-	779.59	311.24

Magnaleasing Overpayment 2-75 to 1-76..... $3,734.88
(3,626 square feet x 1.97 per square foot ÷ 12 = $595.27 per month)

2-76	779.59	595.27	353.53	-	779.59	241.74
3-76	779.59	595.27	353.53	-	779.59	241.74
4-76	779.59	595.27	353.53	-	779.59	241.74
5-76	779.59	595.27	353.53	-	779.59	241.74
6-76	779.59	595.27	353.53	-	779.59	241.74

Magnaleasing Overpayment 2-76 to 6-76..... $1,208.70
(3,626 square feet x 1.97 per square foot ÷ 12 = $595.27 per month)

7-76	779.59	595.27	-	-	779.59	595.27

INTEREST ON COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	0
Period 2-74 to 1-75	
Thru year	
7,354.38 ÷ 2 x 6% =	220.63
2-75 to 6-76	
7,354.38 x 6% x 16/12 =	588.35
Period 2-75 to 1-76	
Thru year	
3,734.88 ÷ 2 x 6% =	112.05
1-76 to 6-76	
3,734.88 x 6% x 6/12 =	112.05
Period 2-76 to 6-76	
Thru year	
1,208.70 ÷ 2 x 6% x 4/12 =	12.08
Period 7-76	0
Total Interest	$1,045.16

E451
Reference Exhibit I-3

SUMMARY OF COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	0
Period 2-74 to 1-75	$7,354.38
Period 2-75 to 1-76	3,734.88
Period 2-76 to 6-76	1,208.70
Period 7-76	595.27
	$12,893.23
Total Overpayment Common Area Damages	12,893.23
Total Interest on Common Area Damages	1,045.16
Total Common Area Damages	$13,838.39

E452
Reference Exhibit I-4
Schedules of common
area overpayment

DEFENDANTS' EXHIBIT I-4 11/4/76

SCHEDULE OF COMMON AREA OVERPAYMENT
STATEN ISLAND MALL

III. These computations assume a 44.2% annual inflation rate and take into account Magnaleasing's "leased" basis.

Date	Billed by S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
8-73	137.97	138.59	-	137.95	-
9-73	179.95	181.30	-	179.95	-
10-73	179.95	181.30	-	179.95	-
11-73	179.95	181.30	-	179.95	-
12-73	179.95	181.30	179.95	-	-
1-74	179.95	181.30	179.95	-	-
Magnaleasing Overpayment 8-73 to 1-74..... (3,626 square feet x .60 per square foot ÷ = $181.30 per month)					-
2-74	779.59	262.88	179.95	599.64	516.71
3-74	779.59	262.88	179.95	599.64	516.71
4-74	779.59	262.88	179.95	599.64	516.71
5-74	779.59	262.88	179.95	599.64	516.71
6-74	779.59	262.88	179.95	599.64	516.71
7-74	779.59	262.88	179.95	599.64	516.71
8-74	779.59	262.88	179.95	599.64	516.71
9-24	779.59	262.88	179.95	599.64	516.71
10-74	779.59	262.88	-	779.59	516.71
11-74	779.59	262.88	-	779.59	516.71
12-74	779.59	262.88	-	3,710.29	3,447.41
1-75	779.59	262.88	-	779.59	516.71

E453
Reference Exhibit I-4

Date	Billed by S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
Magnaleasing Overpayment 2-74 to 1-75..... $9,131.22 (3,626 square feet x .87 per square foot ÷ 12 = $262.88 per month)					
2-75	779.59	377.70	-	779.59	401.89
3-75	779.59	377.70	-	779.59	401.89
4-75	779.59	377.70	-	779.59	401.89
5-75	779.59	377.70	-	779.59	401.89
6-75	779.59	377.70	-	779.59	401.89
7-75	779.59	377.70	-	779.59	401.89
8-75	779.59	377.70	-	779.59	401.89
9-75	779.59	377.70	-	779.59	401.89
10-75	779.59	377.70	-	779.59	401.89
11-75	779.59	377.70	-	779.59	401.89
12-75	779.59	377.70	-	779.59	401.89
1-76	779.59	377.70	-	779.59	401.89
Magnaleasing Overpayment 2-75 to 1-76..... $4,822.68 (3,626 square feet x 1.25 per square foot ÷ 12 = $377.70 per month)					
2-76	779.59	543.90	-	779.59	235.69
3-76	779.59	543.90	-	779.59	235.69
4-76	779.59	543.90	-	779.59	235.69
5-76	779.59	543.90	-	779.59	235.69
6-76	779.59	543.90	-	779.59	235.69
Magnaleasing Overpayment 2-76 to 6-76..... $1,178.45 (3,626 square feet x $1.80 per square foot ÷ 12 = $543.90 per month)					
7-76	779.59	-	-	779.59	779.59

INTEREST ON COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	
Thru year	
9,131.22 ÷ 2 x 6% =	273.94
2-75 to 6-76	
9,131.22 x 6% x 16/12 =	730.50
Period 2-75 to 1-76	
Thru year	
4,822.68 ÷ 2 x 6% =	144.68
1-76 to 6-76	
4,822.68 x 6% x 6/12 =	144.68
Period 2-76 to 6-76	
Thru year	
1,178.45 ÷ 2 x 6% x 4/12 =	11.78
Period 7-76	0
Total Interest	$1,305.58

E455
Reference Exhibit I-4

SUMMARY OF COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	9,131.22
Period 2-75 to 1-76	4,822.68
Period 2-76 to 6-76	1,178.45
Period 7-76	779.59

SUMMARY OF COMMON AREA OVERPAYMENT AND INTEREST DAMAGES

Total Overpayment Common Area Damages	$15,911.94
Total Interest on Common Area Damages	1,305.58
Total Common Area Damages	$17,217.52

11/4/76

DEFENDANTS' EXHIBIT I-5

SCHEDULE OF COMMON AREA OVERPAYMENT
STATEN ISLAND MALL

IIIA. These computations assume a 44.2% annual inflation rate and assume further that Magnaleasing had negotiated to pay on a "leasable" basis.

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
8-73	137.97	137.97	138.59	-	137.95	-
9-73	179.95	179.95	181.30	-	179.95	-
10-73	179.95	179.95	181.30	-	179.95	-
11-73	179.95	179.95	181.30	-	179.95	-
12-73	179.95	179.95	181.30	179.95	-	-
1-74	179.95	179.95	181.30	179.95	-	-
Magnaleasing Overpayment 8-73 to 1-74..... (3,626 square feet x .60 per square foot ÷ 12 = $181.30 per month)						-
2-74	779.59	595.27	262.88	179.95	599.64	332.39
3-74	779.59	595.27	262.88	179.95	599.64	332.39
4-74	779.59	595.27	262.88	179.95	599.64	332.39
5-74	779.59	595.27	262.88	179.95	599.64	332.39
6-74	779.59	595.27	262.88	179.95	599.64	332.39
7-74	779.59	595.27	262.88	179.95	599.64	332.39
8-74	779.59	595.27	262.88	179.95	599.64	332.39
9-24	779.59	595.27	262.88	179.95	599.64	332.39
10-74	779.59	595.27	262.88	-	779.59	332.39
11-74	779.59	595.27	262.88	-	779.59	332.39
12-74	779.59	595.27	262.88	-	3,710.29	3,263.09
1-75	779.59	595.27	262.88	-	779.59	332.39

E457
Reference Exhibit I-5

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
Magnaleasing Overpayment 2-74 to 1-75..... $6,919.38 (3,626 square feet x 1.97 per square foot ÷ 12 = $595.27 per month)						
2-75	779.59	595.27	377.70	-	779.59	217.57
3-75	779.59	595.27	377.70	-	779.59	217.57
4-75	779.59	595.27	377.70	-	779.59	217.57
5-75	779.59	595.27	377.70	-	779.59	217.57
6-75	779.59	595.27	377.70	-	779.59	217.57
7-75	779.59	595.27	377.70	-	779.59	217.57
8-75	779.59	595.27	377.70	-	779.59	217.57
9-75	779.59	595.27	377.70	-	779.59	217.57
10-75	779.59	595.27	377.70	-	779.59	217.57
11-75	779.59	595.27	377.70	-	779.59	217.57
12-75	779.59	595.27	377.70	-	779.59	217.57
1-76	779.59	595.27	377.70	-	779.59	217.57
Magnaleasing Overpayment 2-75 to 1-76..... $2,610.84 (3,626 square feet x 1.97 per square foot ÷ 12 = $595.27 per month)						
2-76	779.59	595.27	543.90	-	779.59	51.37
3-76	779.59	595.27	543.90	-	779.59	51.37
4-76	779.59	595.27	543.90	-	779.59	51.37
5-76	779.59	595.27	543.90	-	779.59	51.37
6-76	779.59	595.27	543.90	-	779.59	51.37
Magnaleasing Overpayment 2-76 to 6-76..... $256.85 (3,626 square feet x $1.97 per square foot ÷ 12 = $595.27 per month)						
7-76	779.59	595.27	-	-	779.59	595.27

INTEREST ON COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	
Thru year	
6,919.38 ÷ 2 x 6% =	207.58
2-75 to 6-76	
6,919.38 x 6% x 16/12 =	553.55
Period 2-75 to 1-76	
Thru year	
2,810.84 ÷ 2 x 6% =	84.33
1-76 to 6-76	
2,810.84 x 6% x 6/12 =	84.33
Period 2-76 to 6-76	
Thru year	
256.85 ÷ 2 x 6% x 4/12 =	2.59
Period 7-76	0
Total Interest	$932.38

SUMMARY OF COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	6,919.38
Period 2-75 to 1-76	2,810.84
Period 2-76 to 6-76	256.85
Period 7-76	595.27
	$10,582.34

SUMMARY OF COMMON AREA OVERPAYMENT AND INTEREST DAMAGES

Total Overpayment Common Area Damages	$10,582.34
Total Interest on Common Area Damages	932.38
Total Common Area Damages	$11,514.72

E460
Reference Exhibit I-6
Schedules of common
area overpayment

DEFENDANTS' EXHIBIT I-6

SCHEDULE OF COMMON AREA OVERPAYMENT
STATEN ISLAND MALL

IV. These computations assume a 48.7% annual inflation rate and take into account Magnaleasing's "leased" basis.

Date	Billed by S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
8-73	137.97	-	-	137.97	-
9-73	179.95	181.30	-	179.95	-
10-73	179.95	181.30	-	179.95	-
11-73	179.95	181.30	-	179.95	-
12-73	179.95	181.30	179.95	-	-
1-74	179.95	181.30	179.95	-	-

Magnaleasing Overpayment 8-73 to 1-74..... -
(3,626 square feet x .60 per square foot ÷ 12 = $181.30 per month)

2-74	779.59	268.93	179.95	599.64	510.66
3-74	779.59	268.93	179.95	599.64	510.66
4-74	779.59	268.93	179.95	599.64	510.66
5-74	779.59	268.93	179.95	599.64	510.66
6-74	779.59	268.93	179.95	599.64	510.66
7-74	779.59	268.93	179.95	599.64	510.66
8-74	779.59	268.93	179.95	599.64	510.66
9-74	779.59	268.93	179.95	599.64	510.66
10-74	779.59	268.93	-	779.59	510.66
11-74	779.59	268.93	-	779.59	510.66
12-74	779.59	268.93	-	3,710.29	3,441.36
1-75	779.59	268.93	-	779.59	510.66

Magnaleasing Overpayment 2-74 to 1-75..... 9,058.62
(3,626 square feet x .89 per square foot ÷ 12 = $268.93 per month)

E461
Reference Exhibit I-6

Date	Billed by S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
2-75	779.59	398.86	-	779.59	380.73
3-75	779.59	398.86	-	779.59	380.73
4-75	779.59	398.86	-	779.59	380.73
5-75	779.59	398.86	-	779.59	380.73
6-75	779.59	398.86	-	779.59	380.73
7-75	779.59	398.86	-	779.59	380.73
8-75	779.59	398.86	-	779.59	380.73
9-75	779.59	398.86	-	779.59	380.73
10-75	779.59	398.86	-	779.59	380.73
11-75	779.59	398.86	-	779.59	380.73
12-75	779.59	398.86	-	779.59	380.73
1-76	779.59	398.86	-	779.59	380.73

Magnaleasing Overpayment 2-75 to 1-76..... $4,568.76
(3,626 square feet x $1.32 per square foot ÷ 12 = $398.86 per month)

2-76	779.59	592.25	-	779.59	187.35
3-76	779.59	592.25	-	779.59	187.35
4-76	779.59	592.25	-	779.59	187.35
5-76	779.59	592.25	-	779.59	187.35
6-76	779.59	592.25	-	779.59	187.35

Magnaleasing Overpayment 2-76 to 6-76..... $936.75
(3,636 square feet x 1.96 per square foot ÷ 12 = $592.24 per month)

7-76	779.59	-	-	779.59	779.59

INTEREST ON COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	
Thru year	
9,058.62 ÷ 2 x 6% =	271.76
2-75 to 6-76	
9,058.62 x 6% x 16/12 =	724.69
Period 2-75 to 1-76	
Thru year	
4,568.76 ÷ 2 x 6% =	137.06
1-76 to 6-76	
4,568.76 x 6% x 6/12 =	137.06
Period 2-76 to 6-76	
Thru year	
936.75 ÷ 2 x 6% x 4/12 =	9.37
Period 7-76	0
Total Interest	$1,279.94

SUMMARY OF COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	9,058.62
Period 2-75 to 1-76	4,568.76
Period 2-76 to 6-76	936.75
Period 7-76	779.59
	$15,343.72

SUMMARY OF COMMON AREA OVERPAYMENT AND INTEREST DAMAGES

Total Overpayment Common Area Damages	$15,343.72
Total Interest on Common Area Damages	1,279.94
Total Common Area Damages	$16,623.66

Reference Exhibit I-7 - Schedules of common area overpayment

DEFENDANTS' EXHIBIT I-7

SCHEDULE OF COMMON AREA OVERPAYMENT
STATEN ISLAND MALL

IVA. These computations assume a 48.7% annual inflation rate and assume further that Magnaleasing had negotiated to pay on a "leasable" basis.

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
8-73	137.97	137.97	-	-	137.97	-
9-73	179.95	179.95	181.30	-	179.95	-
10-73	179.95	179.95	181.30	-	179.95	-
11-73	179.95	179.95	181.30	-	179.95	-
12-73	179.95	179.95	181.30	179.95	-	-
1-74	179.95	179.95	181.30	179.95	-	-
Magnaleasing Overpayment 8-73 to 1-74..... (3,626 square feet x .60 per square foot ÷ 12 = $181.30 per month)						-
2-74	779.59	595.27	268.93	179.95	599.64	326.34
3-74	779.59	595.27	268.93	179.95	599.64	326.34
4-74	779.59	595.27	268.93	179.95	599.64	326.34
5-74	779.59	595.27	268.93	179.95	599.64	326.34
6-74	779.59	595.27	268.93	179.95	599.64	326.34
7-74	779.59	595.27	268.93	179.95	599.64	326.34
8-74	779.59	595.27	268.93	179.95	599.64	326.34
9-74	799.59	595.27	268.93	179.95	599.64	326.34
10-74	779.59	595.27	268.93	-	779.59	326.34
11-74	779.59	595.27	268.93	-	779.59	326.34
12-74	779.59	595.27	268.93	-	3,710.29	3,257.04

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
1-75	779.59	595.27	268.93	-	779.59	326.34
Magnaleasing Overpayment 2-74 to 1-75..... $6,846.78 (3,626 square feet x 1.97 per square foot ÷ 12 = $595.27 per month)						
2-75	779.59	595.27	398.86	-	779.59	196.41
3-75	779.59	595.27	398.86	-	779.59	196.41
4-75	779.59	595.27	398.86	-	779.59	196.41
5-75	779.59	595.27	398.86	-	779.59	196.41
6-75	779.59	595.27	398.86	-	779.59	196.41
7-75	779.59	595.27	398.86	-	779.59	196.41
8-75	779.59	595.27	398.86	-	779.59	196.41
9-75	779.59	595.27	398.86	-	779.59	196.41
10-75	779.59	595.27	398.86	-	779.59	196.41
11-75	779.59	595.27	398.86	-	779.59	196.41
12-75	779.59	595.27	398.86	-	779.59	196.41
1-76	779.59	595.27	398.86	-	779.59	196.41
(Magnaleasing Overpayment 2-75 to 1-76..... $2,356.92 (3,626 square feet x $1.97 per square foot ÷ 12 = $595.27 per month)						
2-76	779.59	595.27	592.25	-	779.59	3.02
3-76	779.59	595.27	592.25	-	779.59	3.02
4-76	779.59	595.27	592.25	-	779.59	3.02
5-76	779.59	595.27	592.25	-	779.59	3.02
6-76	779.59	595.27	592.25	-	779.59	3.02
Magnaleasing Overpayment 2-76 to 6-76..... $15.10 (2,636 square feet x 1.97 per square foot ÷ 12 = $595.27 per month)						
7-76	779.59	595.27	-	-	779.59	595.27

INTEREST ON COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74

Period 2-74 to 1-75

Thru year

6,846.78 ÷ 2 x 6% =	$205.40

2-75 to 6-76

6,846.78 x 6% x 16/12 =	547.74

Period 2-75 to 1-76

Thru year

2,356.92 ÷ 2 x 6% =	70.71

1-76 to 6-76

2,356.92 x 6% x 6/12 =	70.71

Period 2-76 to 6-76

Thru year

15.10 ÷ 2 x 6% x 4/12 =	0.15
Total Interest	$894.71

SUMMARY OF COMMON AREA OVERPAYMENT DAMAGES

Period 8-73 to 1-74	$ 0
Period 2-74 to 1-75	$ 6,846.78
Period 2-75 to 1-76	2,356.92
Period 2-76 to 6-76	15.10
Period 7-76	595.27
	$ 9,814.07

SUMMARY OF COMMON AREA OVERPAYMENT AND INTEREST DAMAGES

Total Overpayment Common Area Charges	$ 9,814.07
Total Interest on Common Area Damages	894.71
Total Common Area Damages	$10,708.78

DEFENDANTS' EXHIBIT J-1 11/4/76

SCHEDULE OF TAX OVERPAYMENT
STATEN ISLAND MALL

I. These computations assume the proper area for Magnaleasing's store, 3,626 square feet.

Date	Billed by S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
8-73	563.99	231.45	-	563.99	332.54
9-73	735.61	302.16	-	735.61	443.45
10-73	735.61	302.16	-	735.61	443.45
11-73	735.61	302.16	-	735.61	443.45
12-73	735.61	302.16	735.61	-	-
1-74	735.61	302.16	735.61	-	-
2-74	735.61	302.16	735.61	-	-
3-74	735.61	302.16	735.61	-	-
4-74	735.61	302.16	735.61	-	-
5-74	794.35	302.16	731.61	62.74	62.74
6-74	794.35	302.16	731.61	62.74	62.74

Magnaleasing Tax Overpayment 8-73 to 6-74..... $1,758.37
(3,626 square feet x $1.00 per square foot ÷ 12 = $302.16 per month)

7-74	794.35	323.31	731.61	62.74	62.74
8-74	794.35	323.31	731.61	62.74	62.74
9-74	794.35	323.31	731.61	62.74	62.74
10-74	794.35	323.31	731.61	62.74	62.74
11-74	794.35	323.31	-	794.35	471.04
12-74	794.35	323.31	-	794.35	471.04
1-75	794.35	323.31	-	794.35	471.04
2-75	794.35	323.31	-	794.35	471.04

Reference Exhibit J-1

Date	Billed by S.I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment
3-75	794.35	323.31	-	794.35	471.04
4-75	794.35	323.31	-	794.35	471.04
5-75	11,173.00*	323.31	-	11,173.00	10,849.69
6-75	1,825.83	323.31	-	1,825.83	1,502.52

Magnaleasing Tax Overpayment 7-74 to 6-75..... $15,429.41
(3,626 square feet x $1.07 per square foot ÷ 12 = $323.31 per month)

7-75	1,825.83	359.57	-	1,825.83	1,466.26
8-75	1,825.83	359.57	-	1,825.83	1,466.26
9-75	1,825.83	359.57	-	1,825.83	1,466.26
10-75	1,825.83	359.57	-	1,825.83	1,466.26
11-75	1,825.83	359.57	-	1,825.83	1,466.26
12-75	1,825.83	359.57	-	1,825.83	1,466.26
1-76	1,825.83	359.57	-	1,825.83	1,466.26
2-76	1,825.83	359.57	-	1,825.83	1,466.26
3-76	1,825.83	359.57	-	1,825.83	1,466.26
4-76	1,825.83	359.57	-	1,825.83	1,466.26
5-76	1,825.83	359.57	-	1,825.83	1,466.26
6-76	1,825.83	359.57	-	1,825.83	1,466.26
7-76	1,825.83	359.57	-	1,825.83	1,825.83

Magnaleasing Tax Overpayment 7-75 to 7-76..... $19,420.95
(3,626 square feet x $1.19 per square foot ÷ 12 = $359.57 per month)

* Includes: May taxes at $794.35 plus $4,125.92 in retroactive taxes 2-1-75 to 5-31-75 and $6,252.72 in retroactive taxes 2-1-74 to 1-31-75.

Tax Damages Summary

Period 8-73 to 6-74	$ 1,758.37
Period 7-74 to 6-75	15,429.41
Period 7-75 to 7-76	19,420.95
Tax Damages	$36,608.73
Interest on Tax Damages	$ 2,226.21
Total Damages with Respect to Taxes ..	$38,834.94

Schedule of Interest on Tax Damages

Period 8-73 to 6-74	
Accrued During Tax Year $1,758.37 ÷ 2 x 6% x 10/12 =	$ 43.95
Accrued in Subsequent 24 Months $1,758.37 x 6% x 24/12 =	211.00
Period 7-74 to 6-75	
Accrued During Tax Year $15,429.41 ÷ 2 x 6% =	462.88
Accrued in Subsequent 12 Months $15,429.41 x 6%	925.76
Period 7-75 to 6-76	
Accrued During Tax Year $19,420.95 ÷ 2 x 6% =	582.62
Period 7-6	0
Interest on Tax Damages	$2,226.21

Schedule of Interest on Tax Damages

Period 8-73 to 6-74	
Accrued During Tax Year	
$1,758.37 ÷ 2 x 6% x 10/12 =	$ 43.95
Accrued in Subsequent 24 Months	
$1,758.37 x 6% x 24/12 =	211.00
Period 7-74 to 6-75	
Accrued During Tax Year	
$15,429.41 ÷ 2 x 6% =	462.88
Accrued in Subsequent 12 Months	
$15,429.41 x 6%	925.76
Period 7-75 to 6-76	
Accrued During Tax Year	
$19,420.95 ÷ 2 x 6% =	582.62
Period 7-6	0
Interest on Tax	
Interest on Tax Damages	
Period 7-6	0
Interest on Tax Damages	$2,226.21

Tax Damages Summary

Period 8-73 to 6-74	$1,758.37
Period 7-74 to 6-75	15,429.41
Period 8-73 to 6-74	$ 1,758.37
Period 7-74 to 6-75	15,429.41
Period 7-75 to 7-76	19,420.95
Tax Damages	$36,608.73
Interest on Tax Damages	$ 2,226.21
Total Damages with Respect to Taxes ..	$38,834.94

E473
Reference Exhibit J-2
Schedules of tax overpayment

DEFENDANTS' EXHIBIT J-2 11/4/76

SCHEDULE OF TAX OVERPAYMENT
STATEN ISLAND MALL

IA. These computations assume the proper area for Magnaleasing's store, 3,626 square feet, and assume further that Magnaleasing had negotiated to pay on a "leasable" basis.

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
8-73	563.99	314.78	231.45	-	563.99	83.33
9-73	735.61	410.94	302.16	-	735.61	108.78
10-73	735.61	410.94	302.16	-	735.61	108.78
11-73	735.61	410.94	302.16	-	735.61	108.78
12-73	735.61	410.94	302.16	735.61	-	-
1-74	735.61	410.94	302.16	735.61	-	-
2-74	735.61	951.82	302.16	735.61	-	-
3-74	735.61	951.82	302.16	735.61	-	-
4-74	735.61	951.82	302.16	735.61	-	-
5-74	794.35	951.82	302.16	731.61	62.74	62.74
6-74	794.35	951.82	302.16	731.61	62.74	62.74

Magnaleasing Tax Overpayment 8-73 to 6-74..... $ 535.15

(3,626 square feet x $1.36 per square foot ÷ 12 = $410.94 per month)
3,626 square feet x $3.15 per square foot ÷ 12 = $951.82 per month)

7-74	794.35	951.82	323.31	731.61	62.74	62.74
8-74	794.35	951.82	323.31	731.61	62.74	62.74
9-74	794.35	951.82	323.31	731.61	62.74	62.74
10-74	794.35	951.82	323.31	731.61	62.74	62.74
11-74	794.35	951.82	323.31	-	794.35	628.51
12-74	794.35	951.82	323.31	-	794.35	628.51
1-75	794.35	951.82	323.31	-	794.35	628.51
2-75	794.35	1,471.55	323.31	-	794.35	1,148.24

E474
Reference Exhibit J-2

Date	Billed by S.I. Mall	Would Have Been Billed by S. I. Mall	Should Have Paid	Tenant Paid	M/L Paid	M/L Overpayment Would Have Been
3-75	794.35	1,471.55	23.31	-	794.35	1,148.24
4-75	794.35	1,471.55	323.31	-	794.35	1,148.24
5-75	11,173.00*	1,471.55	323.31	-	11,173.00	1,148.24
6-75	1,825.83	1,471.55	323.31	-	1,825.83	1,148.24

Magnaleasing Tax Overpayment 7-74 to 6-75..... $7,877.69
(3,626 square feet x $3.15 per square foot ÷ 12 = $951.82 per month)
3,626 square feet x $4.87 per square foot ÷ 12 = $1,471.55 per month)

7-75	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
8-75	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
9-75	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
10-75	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
11-75	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
12-75	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
1-76	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
2-76	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
3-76	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
4-76	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
5-76	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
6-76	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24
7-76	1,825.83	1,471.55	359.57	-	1,825.83	1,148.24

Magnaleasing Tax Overpayment 7-75 to 7-76..... $15,250.53
(3,626 square feet x $4.87 per square foot ÷ 12 = $1,471.55 per month)

* Includes: May taxes at $794.35 plus $4,125.92 in retroactive taxes 2-1-75 to 5-31-75 and $6,252.72 in retroactive taxes 2-1-74 to 1-31-75.

Schedule of Interest on Tax Damages

Period 8-73 to 6-74	
Accrued During Tax Year $535.15 ÷ 2 x 6% x 10/12 =	$ 13.37
Accrued in Subsequent 24 Months $535.15 x 6% x 24/12 =	54.21
Period 7-74 to 6-75	
Accrued During Tax Year $7,877.69 ÷ 2 x 6% =	236.33
Accrued in Subsequent 12 Months $7,877.69 x 6% =	472.66
Period 7-75 to 6-76	
Accrued During Tax Year $15,250.43	457.51
Period 7-6	0
Interest on Tax Damages	$1,234.08

Tax Damages Summary

Period 8-73 to 6-74	$ 535.15
Period 7-74 to 6-75	7,877.69
Period 7-75 to 7-76	15,250.43
Tax Damages	$23,663.27
Interest on Tax Damages	$ 1,234.08
Total Damages with Respect to Taxes ..	$24,897.35

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

X COURT OF APPEALS
SECOND CIRCUIT

MAGNALEASING, INC.,
Plaintiff-Appellee,

- against -

STATEN ISLAND MALL, BLACKFRIARS REALTY CORPL. & TOTTENHAM REALTY CORP.,
Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF ss.:

I, Kevin E. Thomas, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 1515 Macombs Road, Bronx, N.Y. 10452,

That on the 8th day of July 19 77 at 200 Park Avenue New York, N.Y.

deponent served the annexed Exhibit Volumes upon Keane & Butler, Esqs.

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 8th day of July 19 77

Kevin E. Thomas
Print name beneath signature
KEVIN E. THOMAS

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1979